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MICHAEL BEST & FRIEDRICH LLP
Attorneys at Law

www.mbf-law.com

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Commissioners' Office

One South Pinckney Street
P.O. Box 1806
Madison, WI 53701-1806
FAX (608) 283-2275
Telephone (608) 257-3501

Author: Jordan J. Hemaidan
Writer's Direct Line: (608) 283-4431
Email: jjhemaidan@mbf-law.com

Offices in:
Milwaukee, Wisconsin
Manitowoc, Wisconsin
Chicago, Illinois
(Michael Best & Friedrich LLC)

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WISCONSIN PUBLIC SERVICE COMMISSION

HAND-DELIVERED

Ms. Lynda Dorr
Public Service Commission of Wisconsin
610 North Whitney Way
Madison, WI 53705

Re: Investigation Into Ameritech Wisconsin's Unbundled Network Elements
Docket No. 6720-TI-161

Dear Ms. Dorr:

Enclosed for filing please find the original and 22 copies of Ameritech Wisconsin's Reply Brief and Appendix in the above-referenced docket. Also enclosed for filing under cover of a Confidentiality Request and Affidavit is Ameritech Wisconsin's Reply Brief – Confidential Version. Certificates of Service are attached to the briefs.

Please return file-stamped copies of the cover letter, each version of the brief, the Affidavit, and the Confidentiality Request to our messenger. Thank you for your attention to this matter.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

Jordan J. Hemaidan

JJH:smb
Enclosure
cc: Michael Sullivan

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BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation Into Ameritech Wisconsin's	**6720-TI-161**
Unbundled Network Elements	

AMERITECH WISCONSIN

REPLY BRIEF

PUBLIC VERSION

Dated: July 13, 2001

Michael Cauble
AMERITECH WISCONSIN
722 North Broadway Avenue
Milwaukee, WI 53202
(414) 270-4561

Theodore A. Livingston
Christian F. Binnig
Michael T. Sullivan
MAYER, BROWN & PLATT
190 South La Salle Street
Chicago, Illinois 60603
(312) 782-0600

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BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation Into Ameritech Wisconsin's Unbundled Network Elements	6720-TI-161

AMERITECH WISCONSIN'S REPLY BRIEF

Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin ("Ameritech Wisconsin"), by its counsel, submits this brief in reply to the Initial Post-Hearing Brief of AT&T Communications of Wisconsin, L.P. and TCG Milwaukee, d/b/a AT&T Local Services, MCI WorldCom, Inc., McLeodUSA Telecommunications Services, Inc., Rhythms Links, Inc., TDS Metrocom, Inc., Time Warner Telecom, L.P., and KMC Telecom, Inc. ("CLEC Br.") and Initial Brief of Sprint Communications L.P. ("Sprint Br.") This Reply Brief follows the same format as Ameritech Wisconsin's Initial Brief ("AW Br."), which in turn followed the Issues List prepared by the staff and parties. In addition, the Reply Brief includes an Introduction and Executive Summary, which follow next.

INTRODUCTION

Ameritech Wisconsin (referred to in this brief sometimes as "Ameritech" and other times as "Ameritech Wisconsin") and the CLECs (sometimes referred to as the "CLEC Coalition") agree on one very important thing: the results of this proceeding will go a long way toward determining the extent to which true, consumer welfare-producing competition will take root and flourish in the State's telecommunications and broadband markets.

After general agreement on that broad proposition, however, the two sides part company in stark fashion.

Ameritech maintains that the best (and only) available path for the Commission to follow if it wishes to achieve the goal of promoting competition and bringing to the citizens of Wisconsin the benefits that true, economically-efficient competition brings is, simply, to follow and apply the law. That means (i) determining UNE rates through a dispassionate application of the FCC's TELRIC methodology, (ii) permitting Ameritech to recover the specific costs that the FCC has mandated should be recovered (*e.g.*, costs incurred to condition loops), and (iii) in considering requests that additional unbundling requirements be imposed on Ameritech (*e.g.*, various alleged "UNEs" that make up Ameritech's proposed Project Pronto DSL overlay network), paying heed to and following the FCC's rules regarding what State commissions may and *may not* require.

With respect to rates, Staff's Duane Wilson got it right when he said: "[T]he most important consideration in this docket is to end up with prices that are in line with costs." Tr. Vol. 12 at 4420. That is what the law requires and that is what good public policy requires. Rates based on efficiently-incurred costs will permit efficient firms that wish to enter the market by using leased parts of Ameritech's network to do so. And rates based on such costs will encourage efficient facilities-based CLECs to invest in their own facilities and infrastructure and expand their presence in the market. And, finally, rates based on such costs will ensure Ameritech's long-term viability and provide it with the resources and incentive to invest in maintaining, upgrading and expanding the public switched network. All of these are desirable outcomes. They all enhance overall consumer welfare. And they all will help foster competition, economic growth, and the deployment (and availability) throughout the State of high quality, state-of-the art telecommunications services.

The law and sound public policy also converge with respect to the question of whether the Commission (i) should order Ameritech to provide unbundled access to its Project Pronto DSL overlay network, and (ii) permit the CLECs to dictate how Ameritech's enormous Project Pronto investment is to be used. The applicable law is crystal clear. The Project Pronto overlay includes packet switching functionality, and if the CLECs were to obtain access to the Project Pronto "piece parts" on an unbundled basis, they would necessarily obtain this functionality. The FCC, however, has determined that State commissions may *not* require packet switching to be unbundled unless four specific conditions are satisfied – and *none* of these conditions are satisfied here.[1] Accordingly, if the Commission were to follow the law, it would reject the CLECs' Project Pronto unbundling demand.

And that would be a good public policy decision as well. Project Pronto is designed to make high speed Internet access, via xDSL technology, available to millions of residential and small business customers (for whom such access is otherwise unavailable) and to provide for millions of others a competitive alternative to the cable modem broadband technology that currently dominates the advanced services market. If deployed as planned, Project Pronto's DSL service would be available to all CLECs and Ameritech's advanced services affiliate (AADS) at TELRIC rates – so that all carriers could compete on an equal footing with each other. Equally important, if deployed as planned, Project Pronto would provide an economically attractive

[1] One of the conditions that must be satisfied before it is lawful to require packet switching to be provided as a UNE is that the incumbent LEC must refuse to permit CLECs to collocate DSLAMs (Digital Subscriber Line Access Multiplexer) in remote terminals. It is undisputed in this proceeding that Ameritech permits collocation of DSLAMs in its remote terminals. Indeed, where there is insufficient space at the remote terminal to accommodate such collocation, Ameritech has committed to provide additional space adjacent to the remote terminal to accommodate it.

alternative to the dominant player in the market, cable modem (the largest seller of which is AT&T).

If, on the other hand, Project Pronto is burdened with the additional costs and the inefficiencies that the CLECs' unbundling demand would bring, its deployment would be difficult to justify from an economic and financial standpoint. And even if deployed, these costs and inefficiencies would prevent Project Pronto from becoming a viable competitive alternative to AT&T's (and others') cable broadband service.

The CLECs, for their part, pay lip service to what the law requires. They say, for example, that they want the Commission to apply TELRIC and to adopt rates that comply with the FCC's methodology. But that plainly is not their real agenda. What they really want is below cost (and in some cases *far* below cost) rates – so that the individual members of the CLEC Coalition may free-ride on Ameritech's network and enjoy a competitive advantage *vis a vis* both Ameritech and nascent facilities-based competitors.

Two examples graphically display the CLECs' true colors. The first example: the FCC's TELRIC methodology requires the use of fill factors that represent a reasonable projection of *actual total usage*. (*See First Report and Order*, ¶ 682.) Ameritech's network employs, and for quite some time has employed, copper distribution; and all parties to this proceeding agree that the highly-efficient hypothetical network mandated by TELRIC likewise will employ copper distribution. For years, Ameritech's copper distribution plant has exhibited a consistent fill factor of about **[Begin Conf*********End Conf]**. Why so low? Because it is economically efficient to install and maintain an enormous amount of spare capacity in the case of this loop component.

A simple cost comparison shows why. Say current demand would be more than satisfied by a 25 pair cable, although future demand likely will require more. What should the carrier do? Lay a 25 pair cable now, and plan to augment capacity in the future as demand grows? Or lay a 50 pair cable now? The answer is a no brainer. The incremental cost of laying the 50 pair cable now is **[Begin Conf*********End Conf]** per foot, while the cost of adding a 25 pair cable in the future is **[Begin Conf**********End Conf]** per foot. An efficient firm obviously would opt to put in the 50 pair cable now – even though it would be left with a fill factor of well less than 50%. The **[Begin Conf*********End Conf]** per foot investment now will save resources and costs *50 times greater* in the future. These fundamental – and undisputed – facts make clear that the current actual fill for copper distribution plant *is* economically efficient, and that that fill level therefore is the most reasonable projection of actual total usage in the future.

The CLECs, however, say that the Commission should reject Ameritech's proposed fill factor – not because it fails to satisfy the FCC's legally binding mandate, but because it leads to a cost, and a loop rate, that is too high for their liking. They suggest, instead, that the Commission should disregard federal law and economic efficiency, and use a much higher fill factor of **[Begin Conf**********End Conf]**, one that assumes very little spare capacity (and therefore one that opts for the **[Begin Conf**********End Conf]** per foot alternative, rather than the **[Begin Conf*********End Conf]** per foot one), and one that is totally unhinged from the legally mandated "reasonable projection of actual total usage" standard.

A second example of the CLECs' true colors: the parties agree that the Commission should use Ameritech's current switch vendor contracts to determine the costs Ameritech incurs for switching. These contracts provide for two prices: (i) a very low per line replacement price for a limited number of specifically identified switches, and (ii) a much higher per line price for

all additional, or "growth," lines added during the life of the contracts. Ameritech has taken the reasonable (and, we believe, obviously correct) position that the per line cost should be a meld of the two prices, weighted according to the relative proportion of replacement lines and expected growth lines. The CLECs' expert, however, has taken the position that in a "pure TELRIC approach," only replacement prices should be used. It is obvious why: that approach leads to a much lower switching cost and rate, even though it clearly does not reflect what Ameritech pays and will pay for switching, and therefore is not in any sense "in line with costs." Tr. Vol. 12 at 4420 (Testimony of Duane Wilson). It also leads to a patently absurd result. Nortel has provided about one-half of the total lines of switching in Ameritech's network. Its replacement price is **[Begin Conf********End Conf]** per line. Accordingly, the CLECs' "pure TELRIC approach" posits that Nortel would be willing to supply millions lines of switching for **[Begin Conf**********End Conf]**! Nothing demonstrates quite so clearly the lengths to which the CLECs will go to achieve below cost rates.

When it comes to Project Pronto, and their unbundling demands, the CLECs similarly pay lip service to what the law requires. Forced to admit that the Project Pronto overlay network includes packet switching, however, the CLECs quickly resort to the contention that the Commission may disregard what the FCC has said and what its rules require. The FCC has held, in no uncertain terms, that federal law does not permit the imposition of a requirement that packet switching be unbundled under the circumstances present here. Apparently undeterred by their loss at the FCC in the relevant rulemaking, the CLECs invite the Commission to join them in an act of civil disobedience. The CLECs do not care about the law; what they care about is getting a free ride on Ameritech's enormous investment and equally enormous risks. And in the

case of AT&T, what they apparently care about is hamstringing a potentially formidable broadband competitor.

And this act of civil disobedience would be very bad public policy. In the words of AT&T's Chairman and CEO, W. Michael Armstrong:

> It's not fair. It's not right. Worse, it would inhibit industry growth and competition. No company will invest billions of dollars to become a facilities-based broadband services provider if competitors who have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride on the investments and risks of others.

Speech delivered to Washington Metropolitan Cable Club, November 2, 1998.

* * *

In an effort to persuade the Commission to adopt unlawfully low rates, the CLEC Coalition employs naked scare tactics and characterizations of Ameritech's actions in the current competitive landscape in telecommunications that are completely divorced from reality. The CLECs say, in a nutshell, that the promise of competition is dying, and that CLECs are falling by the wayside, crushed by the anticompetitive actions of Ameritech and other BOCs. And they say that the only way to correct this sad state of affairs is to adopt low, below cost UNE rates.

The facts are completely to the contrary. Competition is growing at what the FCC itself characterizes as a "robust" rate. Reply Appendix, Tab A, p. 1 (5/21/01 release by the FCC of its most recent data on local telephone competition, reflecting data through the end of 2000).[2] In 1996, new entrants had less than 1% of the nation's lines. *Id.*, Tab B, p. 7 (article from *Telecommunications* detailing why certain competing local exchange carriers have been successful from the perspective of executives and financial analysts). By the end of 2000, they had captured 8.5% of nationwide lines, or 16.4 million lines. *Id.*, Tab A, p. 1. Most telling is

[2] Ameritech Wisconsin has filed herewith an Appendix of Exhibits, cited herein as "Reply Appendix, Tab __."

that much of this "robust" growth took place in the past year. CLECs' total telecommunications revenues grew from $29.2 billion in 1999 to nearly $40 billion in 2000. *Id.*, Tab B, p. 1. Their market share grew from 4.4% (or 8.3 million lines) as of December 31, 1999 to 8.5% (or 16.4 million lines) as of December 31, 2000 – *i.e.*, CLECs' market share nearly doubled in the past year. *Id.*, Tab A, p. 1.

The situation is even rosier in Wisconsin, where CLECs have captured 9% of the lines – 69% of which serve the most lucrative telecommunications customers: medium and large businesses, institutional and government customers. *Id.*, Tab A, Table 6.[3] In short, competition is alive, well and growing – nationwide and here in Wisconsin as well.

It is true that a number of CLECs have failed, and that others are in precarious financial straits. But the consensus is that this is due to bad business plans and poor management – not to unlawful foot dragging or other anticompetitive behavior by Ameritech and its fellow BOCs. Reply Appendix, Tab B, pp. 2-7; Tab C, p. 1 (study prepared by Robert Crandall, senior fellow at the Brookings Institution, assessing competitive local exchange carriers five years after passage of the Telecommunications Act). Moreover, it is also clear that many CLECs remain strong and vibrant – and growing. Two of the bigger success stories are participants in this proceeding: Time Warner and McLeod. *Id.*, Tab C, p. 4.

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[3] The CLECs are correct about one thing – the relative dearth of competition in the residential market. But this is not because of any anticompetitive behavior on Ameritech's part. Rather, it is the result of a regulated rate structure which requires Ameritech to provide basic local exchange service at rates that fail even to recover Ameritech's costs. *See* the Testimony of Staff's Duane Wilson at Tr. Vol. 12 at 4415. This basic fact was confirmed by the analysis of AT&T's own cost expert, James Henson, in the AT&T/Ameritech Wisconsin 1996 access and interconnection arbitration. See Tr. Vol. 6 at 1928. These low residential rates discourage competitive entry. By the same token, the above cost rates paid by business customers have attracted an abundance of competitive attention. Below cost UNE rates will not stimulate greater residential market penetration on the part of CLECs; it will simply make it easier – and even more lucrative – for them to cream skim, *i.e.*, kick off Ameritech's profitable large and medium-sized business customers.

Critically, the growth in competition has been fueled for the most part by CLECs who are facilities-based – *i.e.*, ones who have built their own networks or significant parts of their own networks. *Id.*, Tab C, p. 1. Of the 16.4 million lines served by new entrants, about 10 million are served by CLECs employing their own facilities – and nearly 6 million by CLECs using their own *loop* facilities. *Id.*, Tab A, p. 2. These are precisely the CLECs that will be harmed by below cost UNE rates. And below cost rates will give competitors using UNEs an unfair competitive advantage and will devalue, significantly and immediately, the investment that facilities-based carriers have already made. And these are precisely the CLECs who were most important to furthering the long range pro-competitive goals of Congress and of this Commission. As recognized by Justice Breyer in his opinion concurring in part and dissenting in part in the landmark case, *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 425 (1999):

> Increased sharing by itself does not automatically mean increased competition. It is in the unshared, not in the shared, portions of the enterprise that meaningful competition would likely emerge. Rules that force firms to share every resource or element of a business would create not competition, but pervasive regulation, for the regulators, not the marketplace, would set the relevant terms.

Again, the law – which requires "prices that are in line with costs" – and the dictates of good public policy converge and coalesce.

* * *

Finally, the CLEC Coalition tries to paint a picture of a behemoth SBC-Ameritech, towering over a weakened CLEC community, and attempting to bludgeon the CLECs to death with a scorched earth litigation strategy. The facts again are to the contrary.

SBC's total market capitalization as of July 6, 2001 was $135 billion – not the $145 billion represented in the CLECs' opening brief. Reply Appendix, Tab D (July 6, 2001 market capitalization for SBC from www.quicken.com). By comparison, the CLECs' arrayed

against Ameritech in this proceeding currently have an aggregate market value of more than $190 billion. Clearly, if size matters, the CLECs have it, and we don't.

As for litigation, it is true that there has been and likely will continue to be a substantial amount of litigation – although hopefully it will diminish as the rules of the road finally get ironed out. But it manifestly has not been a one way street to the courthouse (or agency hearing room). The CLECs have been just as quick – if not quicker – to challenge regulatory actions with which they disagree. For example, mere days after the FCC's new order on reciprocal compensation for ISP-bound traffic became effective[4], WorldCom and other CLECs raced to the D.C. Circuit Court of Appeals for relief. *See WorldCom Inc. v. FCC*, No. 01-1218 (D.C. Cir. May 17, 2001) (lead case that consolidated Nos. 01-1229 [Sprint Corp.], 01-1243 [AT&T Corp.], 01-1255 [KMC Telecom Holdings, Inc.], 01-1256 [Core Communications, Inc.], 01-1257 [eSpire Communications], 01-1267 [Level 3 Communications, LLC], and 01-1274 [Global Naps, Inc.]).

* * *

In sum, we urge the Commission to ignore the CLECs' factual misrepresentations and false innuendo, to say "no" to their invitation to defy federal law and set below cost rates and order unbundling that the FCC has forbidden, and at the end of the day to follow and abide by the law. That is the right thing to do – and from the perspective of sound public policy, the smart thing to do as well.

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[4] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation for ISP, Bound Traffic*, CC Docket Nos. 96-98, 99-68, FCC 01-131 (effective May 15, 2001).

EXECUTIVE SUMMARY

Principles Governing Cost Recovery Under the Act

The principal function of this proceeding is to set rates for UNEs mandated by the 1996 federal Telecommunications Act (the "Act" or "1996 Act"). Federal law – specifically, section 252(d) of the Act and the FCC's regulations implementing that provision – governs the determination of these rates. *See AT&T v. Iowa Utilities Board*, 525 U.S. 366, 378 n.6 & 379 (1999). Accordingly, in making the pricing determinations required in this proceeding, the Commission must apply either section 252(d) directly or, where applicable, the FCC regulations interpreting and implementing that provision.

The FCC in its *First Report And Order* and the accompanying regulations establishes the "principles and requirements" that must be used to set rates for UNEs. These principles and requirements have been dubbed the TELRIC methodology. TELRIC has two core, or bedrock, principles – which are codified at 47 C.F.R. § 51.505. These are:

- costs are to be forward-looking rather than historical; and
- costs are to be based on the cost of providing discrete parts and functions of a hypothetical network that is optimally configured from an efficiency standpoint, and that employs on a 100% basis the least cost, best available technology – and *not* the cost of providing parts and functions of the incumbent's (here Ameritech's) actual real world network.

Ameritech has developed cost studies that comply scrupulously with TELRIC and both of these bedrock principles. And these studies have generated the TELRIC-compliant rates that Ameritech has proposed here. Based on currently effective federal law, Ameritech respectfully submits that the Commission should accept these studies and adopt the rates they have produced.

Ameritech hastens to make clear, however, that it has complied with TELRIC "under protest" – "under protest" because Ameritech believes TELRIC, and in particular both of its core principles, is unlawful. The reason for this is quite simple. The Act mandates that the price of

UNEs "shall be based on the cost . . . of providing" them. Act, § 252(d)(1). TELRIC, however, guarantees that UNE prices will be *lower* than, and not *based on*, the cost of providing them.

With respect to the first principle (the forward-looking cost paradigm), the telecommunications industry is one that is marked by declining costs. Therefore, basing prices on forward-looking rather than historical, actually incurred costs, guarantees that at least some prudently incurred costs will be stranded and go unrecovered. With respect to the second principle (the hypothetical network standard), *no* carrier has – or can have – the perfect degree of efficiency that this principle requires. To come close to attaining it, a carrier would have to rebuild its network literally every day to ensure optimal configuration and optimal utilization of rapidly developing technology. No real world firm could ever do that; hence, no real world firm could ever achieve the degree of efficiency embodied in the hypothetical network standard. Accordingly, *every* carrier will necessarily have greater costs than those generated by the hypothetical network standard.[5]

Thus, TELRIC, even properly applied, ensures rates that are *below* cost, not just for Ameritech but for any real world carrier (because no carrier could conceivably achieve the super efficiency mandated by the hypothetical network standard). Accordingly, even if the Commission were to adopt *in toto* Ameritech's proposed rates, it would still be forcing Ameritech to forego full recovery of its legitimate costs. It would still be encouraging inefficient firms to enter and stay in the market (because they will be able to provide service by utilizing inputs purchased at below cost rates). And it would still be discouraging true facilities-based competitors from entering and expanding their presence in the market (because the availability of

[5] Ameritech expects that its position on the unlawfulness of TELRIC will be upheld by the United States Supreme Court in the *IUB III* case currently pending in that court. *See Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000), *cert. granted*, 121 S. Ct. 877 (Jan. 21, 2001) (No. 00-511).

Ameritech's network at below cost rates will both (i) put them at a competitive disadvantage *vis a vis* potentially less efficient competitors who utilize Ameritech's elements, and (ii) devalue substantially the investments these facilities-based competitors have already made or will need to make to enter and expand their presence).

The CLEC Coalition, however, is not content with the below cost rates generated by TELRIC, properly applied. They want still lower rates – and in many cases, far lower rates. Were the Commission to accept the CLECs' position, that might serve well the *private* interests of the individual members of the Coalition. But it would be disastrous for the public interest. Accepting the CLEC position would greatly exacerbate the competitive distortions caused by TELRIC and could well strike the death knell of facilities-based competition in Wisconsin. To put it bluntly (and rhetorically): Why would anyone invest in telecommunications facilities and infrastructure when they could make use of Ameritech's network and facilities for less?

In a nutshell: TELRIC itself generates below cost prices, which in the long run ill serves the public interest. The Commission should decline the CLECs' invitation to reject TELRIC and establish even lower rates.

* * *

The CLECs contend that Ameritech could not have complied with TELRIC because its proposed costs have gone up. First, Ameritech's calculated costs (and proposed rates) have not all increased. Its switching and transport rates have come down substantially – because Ameritech has used better and more precise models, and because the switching costs Ameritech incurs have declined. Second, as for loops, costs and proposed rates indeed have gone up, but that is because Ameritech has complied with TELRIC, not because it has defied it. In earlier proceedings, Ameritech used hypothetical fill factors that were not reflective either of the current or historical utilization of its loop plant or of what usage the components of that plant would likely experience in the future. Ameritech now uses the fill factors dictated by federal law – *i.e.*,

ones that represent "a reasonable projection of actual total usage." Compliance with that dictate of federal law has led to the higher costs and higher proposed rates.

Cost of Capital

Ameritech Wisconsin has proposed a cost of capital of 12.19%, and has presented a detailed study that supports it. This study (and comparable results) have been approved by State commissions in Connecticut and Nevada. The CLECs do not contest the appropriateness of the 12.19% figure – for good reason: it is lower (and therefore leads to lower rates) than the cost of capital number approved by the Commission in Case No. 6720-T1-120 (the SGAT case): 13.60%.

Staff contends that the figure should be still lower – although it does not come forward with a specific suggestion. Staff's position is premised on its assertion that a debt to equity ratio of 45:55 should be utilized (rather than the 14:86 used by Ameritech). The fundamental problem with what Staff suggests is that it would leave Ameritech with debt service obligations so great that Ameritech would be unable to maintain even an S&P A bond rating (as Staff itself concedes – *see* Tr. Vol. 12 at 4379). At the same time, Staff agrees that Ameritech should use a capital structure consistent with a AA rating (Ameritech Wisconsin's current rating). This concession and agreement undercut Staff's suggestion – and leaves the Commission with but one choice: adopt Ameritech's proposed 12.19% cost of capital.

Joint and Common Costs

Ameritech Wisconsin, like every firm, incurs indirect, or "joint and common costs" – *i.e.*, "costs that are incurred in connection with the production of multiple products and services" and that will not be avoided (and which may in fact remain completely unchanged) were the firm to abandon the production of any particular product or service. *First Report and Order*, ¶ 676. To

remain in business, Ameritech Wisconsin must recover these costs. The FCC has recognized this in mandating that the price for each element, pursuant to § 252(d)(1) of the Act, "*shall*" include "a reasonable measure of [joint and common] costs." *Id.* at ¶ 694 (emphasis added). The Commission's task here is to implement the FCC's legally binding mandate and adopt a joint and common cost factor that ensures the prices for interconnection and access to network elements include this "reasonable measure" of joint and common costs.

Not only is it important from a legal standpoint for the Commission to arrive at a joint and common cost markup that is "reasonable" (*i.e.*, one that really represents a fair share of Ameritech's actual joint and common costs), it is also critical from the standpoint of fundamental fairness and sound public policy that it do so. If the Commission were to adopt a joint and common cost factor that understates Ameritech's legitimate forward-looking joint and common costs, *i.e.*, one that causes Ameritech *not* to recover those costs, Ameritech's long-term viability would be placed in jeopardy – and that would be unfair to the Company and its shareholders.

It would also be unfair and detrimental to the public interest. If Ameritech Wisconsin is unable to recover its joint and common costs, it will lose both its incentive and its ability to make needed investments in network facilities and infrastructure. If that were to occur, Wisconsin customers would suffer the obvious consequence: fewer services, fewer *advanced* services and, overall, poorer service. Severe underrecovery of joint and common costs would also, perversely, force Ameritech Wisconsin to become less efficient. That is, joint and common costs "are precisely [the firm's] economies of scope, which means that they are the firm's efficiency gains from jointly producing multiple services. To price without regard to those costs is to penalize a firm for its efficiencies." J. Gregory Sidak & Daniel F. Spulber, *The Tragedy of the Telecommons: Government Pricing of Unbundled Network Elements under the*

Telecommunications Act of 1996, 97 Colum. L. Rev. 1081, 1147 (1997). Accordingly, if Ameritech Wisconsin were denied full recovery of its joint and common costs, it would be compelled (if it were to remain in business) to reduce those costs. And that would mean foregoing activities that create "economies of scope" and increased efficiency.

Finally, the TELRIC methodology ensures rates that are below the incumbent's real costs – as well as below those of any real world, facilities-based competitor. Thus, TELRIC alone forces the incumbent to subsidize, unfairly and improperly, competitors who choose to compete through the use of the incumbent's UNEs; it also confers on those UNE-based competitors an unfair competitive advantage, an advantage wholly unrelated to economic efficiency, *vis a vis* both the incumbent and new entrants who have chosen to use their own facilities to enter the market. If the Commission were to adopt a joint and common cost markup that is too low, it would exacerbate the economic distortions and economically inefficient underrecovery inherent in TELRIC and make it even more difficult for true facilities-based competition to take root.

Ameritech has constructed a model to determine that "reasonable measure" of joint and common costs. The model presented here:

- closely mirrors the top down approach presented by Staff in Case No. 6720-T1-120;
- explicitly excludes costs that should not be allocated to UNEs and interconnection;
- utilizes publicly available data; and
- is simple, flexible, easily understood, easily audited, and easily reconciled with publicly reported data.

Ameritech Wisconsin's joint and common cost model yields a markup of **[Begin Conf**********End Conf]**.

The CLEC Coalition, rather than propose its own model, chose instead to take what Ameritech Wisconsin has done and make "adjustments." These adjustments can be lumped into two categories: ones that shrink or deflate the numerator; and ones that inflate the denominator. Both types of adjustments go in the same direction: both make the fraction smaller, which reduces the joint/common cost percentage markup. As we demonstrated in our Initial Brief, all of the adjustments are flawed and should be rejected. *See* AW Br. at 17-19, 23-35.

To shrink or deflate the numerator, the CLECs:

- eliminate with no justification substantial *wholesale* product costs related directly to provisioning and supporting the use of UNEs (*i.e.*, quintessential joint costs);
- eliminate tens of millions of dollars of common costs based on the unsupported assertion that those sums *might* contain a small amount of direct costs attributable to an unregulated service;
- arbitrarily reduce Ameritech's common costs by 24% to reflect cost savings that increased efficiency will bring – while ignoring altogether that Ameritech's model already incorporates anticipated savings in roughly the same amount;
- remove expenses that have already been removed from certain clearance accounts; and
- improperly eliminate legal and related expenses that Ameritech is forced to incur by the 1996 Act and proceedings such as this one, and force retail customers to bear the entire cost.

To inflate the denominator, the CLECs' Mr. Behounek increases substantially the basket of direct, incremental costs which Ameritech will recover in the TELRIC portion of its rates. This is indeed astounding. Through all of their other witnesses, the CLECs have chopped away at this very basket of costs, in order to shrink the direct, incremental costs and thereby reduce substantially the TELRIC portion of Ameritech's rates. The CLECs want to have it both ways. They want a small pool of direct, incremental costs when the Commission is determining the TELRIC portion of Ameritech's rates. And they want an artificially inflated pool of these costs

when the Commission is attempting to determine the joint/common cost markup. The Commission should see through this "trick" and reject it.

Comparing the two competing markups – **[Begin Conf**********End Conf]** vs. 12.94% – with existing benchmarks, including ones advocated by the CLECs themselves, reinforces the conclusion that Ameritech Wisconsin's proposal is the only reasonable measure in the record of this proceeding.

- **Wisconsin** – In 1996, using the identical standard applicable here, the Commission determined that a "reasonable measure" of joint and common costs was 27% in the AT&T arbitration and 29% in the later MCI arbitration.

- **Other States** – Under the same standard that is applicable here, the Illinois commission adopted a joint and common cost markup of 34.55%, and the Ohio commission adopted one of 33.64% – both higher than what Ameritech proposes here.

- **Hatfield Model** – Both AT&T and WorldCom have supported the use of the Hatfield Model throughout the country for determining rates under the 1996 Act. The Hatfield Model produces markups for Ameritech Wisconsin for corporate overhead and total common loadings of 10.4% and 24.3%, respectively. Ameritech Wisconsin's own joint and common cost model generates significantly lower loadings: 4.96% for corporate overhead and 19.59% for total common loadings.

- **AT&T** – Asserting that AT&T in the late 1990s and Ameritech Wisconsin today are comparable for purposes of joint and common costs, Mr. Behounek noted that AT&T in 1999 claimed to have reduced its SG&A (Selling, General & Administrative) expenses by 24% over a 2-3 year period in order to remain and/or become more competitive. From this, he concluded that Ameritech should be forced to reduce its joint and common costs by a similar 24% in order to remain and/or become more competitive. If one accepts Mr. Behounek's threshold premise – *i.e.*, that AT&T and Ameritech Wisconsin are comparable for purposes of joint and common costs – then Ameritech Wisconsin's 32.11% markup understates significantly what a "reasonable measure" would be. Using complete USOA data filed by AT&T in 1995, on the eve of AT&T being accorded non-dominant status by the FCC, AT&T's joint and common cost loading was 54.60% – more than **[Begin Conf*********End Conf]** greater than that proposed here by Ameritech for itself.[6]

[6] Mr. Behounek's 24% reduction is itself misleading. Between 1997 and 1999, AT&T's expense to revenue ratio dropped by 24%; this was due, however, not to a decrease in expenses

Loop-related Issues

Congress, through the pricing provisions in section 252(d) of the 1996 Act, and the FCC, through its regulations and orders interpreting those provisions, have already decided what is reasonable in terms of the factors that should (indeed, *must*) be used in determining UNE rates. The Commission should focus on evaluating Ameritech Wisconsin's loop and subloop rates in light of these provisions, regulations, and orders. Indeed, as discussed fully in Ameritech Wisconsin's Initial Brief, that is precisely what the Commission is required to do. *AT&T v. Iowa Utilities Board,* 525 U.S. at 378 n.6 (1999).

At least some of the CLECs (*i.e.*, TDS Metrocom and McLeodUSA) believe the Commission should also consider the "real world effects" of the decisions it makes in this docket. What this charge really amounts to, however, is a threat that if the Commission sets UNE prices "too high," they will "take their ball and go home" by exiting the competitive market in Wisconsin. They maintain that competition will flourish in Wisconsin only as long as the Commission sets low (meaning "below cost") UNE rates, and therefore, setting low UNE rates should be the Commission's guiding principle. This tack is at odds with section 252(d)'s mandate that UNE rates be set based on cost. As we have discussed, TELRIC already defies that mandate – by ensuring that the rates it generates will fail to recover the real world costs of both the incumbent and *any* facilities-based competitor. Accepting the invitation of TDS and McLeod (and the other CLECs) to make low rates the goal, rather than the careful application of TELRIC, will only make matters worse. Rather than fostering real competition, low UNE rates – ones that are lower even than what TELRIC dictates – will only promote "phony" competition: inefficient

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but to a dramatic increase in revenues. Moreover, Ameritech's own model assumes a 3% reduction per year in common costs – which roughly matches the percentage reduction in AT&T's SG&A expenses during the three-year period 1997 through 1999.

firms will be allowed to survive – so long as their business plan revolves around use of the incumbent's UNEs. And facilities-based carriers – the engines of true competition – will be discouraged from investing in and maintaining existing facilities, building new ones, and deploying new technologies.

Loop and subloop cost inputs

Ameritech Wisconsin's unbundled loop cost study calculates the cost to Ameritech Wisconsin of providing an unbundled loop. The CLECs do not challenge the study's basic methodology; instead, they opt to challenge certain inputs and assumptions used in the study, with one objective in mind: to drive down Ameritech Wisconsin's unbundled loop rates as far as possible. All of the CLECs' challenges are groundless, as we demonstrate in Ameritech Wisconsin's Initial Brief. Two of these challenges, however, merit special mention.

Fill factors. The first of the CLEC challenges concerns Ameritech Wisconsin's fill factor assumptions for the copper distribution, copper and fiber feeder, and loop electronics components of the loop. Paragraph 682 of the FCC's *First Report and Order* mandates the application and adoption of "accurate 'fill factors.'" For a fill factor to be accurate, it must be based on "a reasonable projection of the actual total usage of the element." *Id.* Accordingly, in this proceeding, the Commission *must* adopt fill factors that represent "a reasonable projection of the *actual total usage of the element*." *Id.* (emphasis added). The only fills proposed in this proceeding that meet that requirement are those proposed by Ameritech.

To comply with paragraph 682, here is what Ameritech did. First, it constructed the forward-looking network, employing the least-cost, best currently available technology, mandated by the FCC's TELRIC methodology. The loop plant of this hypothetical network is made up of the following components:

- copper distribution
- copper feeder
- fiber feeder
- state of the art digital loop carrier ("DLC") equipment

The task then was to come up with a "reasonable projection of actual total usage of" each of these components. That task was made relatively easy because of three basic facts – none of which is disputed in any way by the CLECs.

First, each of these loop plant components has been employed for quite some time in Ameritech's actual real world network. Ameritech's hypothetical TELRIC network has more fiber, and less copper, than the actual network. But both have copper and fiber – and the actual real world network has employed both for many years. And state of the art DLC equipment – specifically Litespan DLC equipment – has been used in the actual network for a number of years as well. The hypothetical TELRIC network uses this variety of DLC equipment exclusively (because it represents the least cost, best currently available technology) – while the real world network uses other, less efficient pair gain technology, in addition to Litespan DLC equipment; but both use Litespan equipment.

Second, the actual total usage of each of these components has been stable over a number of years. For example, copper distribution utilization has been about **[Begin Conf*** ******End Conf]** for many years; copper feeder utilization has been **[Begin Conf*** ******End Conf]** for a like number of years; fiber feeder utilization has been about **[Begin Conf*********End Conf]** for the last 5-6 years; and Alcatel Litespan DLC equipment utilization has been a consistent **[Begin Conf*********End Conf]** for a like number of years.

Third, and critically, the same economic and technological factors that drove placement and spare capacity decisions in the past will continue to drive such decisions in the foreseeable

future. Copper distribution provides an excellent example of why this is true. Even if a 25 pair cable will satisfy current demand, it makes economic sense to put in a 50 pair cable at the outset – because the incremental cost of doing so is only **[Begin Conf*********End Conf]** per foot, whereas the cost of augmenting the original installation sometime in the future would be *50 times greater* (**[Begin Conf**********End Conf]** per foot). Substantial pair capacity thus is, and will continue to be, optimally economically efficient.

These three factors together compel the conclusion that the historical – and current actual – usage of each of the components of the forward-looking loop plant constructed by Ameritech's cost model is the most reasonable projection of the actual total usage that can be expected in the hypothetical TELRIC network for the foreseeable future.

UDLC vs. IDLC. The CLECs also challenge the unbundled loop study's assumption that Universal Digital Loop Carrier ("UDLC") will be used to provision unbundled loops served by digital loop carrier systems. DLC allows the signals from several individual copper loops to be combined, or "multiplexed," together and placed onto a single copper or fiber feeder cable, sharing a single path for at least part of the trip between the customers' premises and the central office. UDLC is, under TELRIC, the least-cost, most efficient method of providing unbundled loops served over DLC. UDLC allows the individual customer signals to be separated back out from the combined signal at the central office before the signals are fed into the switch. It is for this reason – because an individual loop can be extracted from the DLC at the central office and accessed by a CLEC – that UDLC is assumed in the unbundled loop study.

Loops served by the other form of DLC technology – Integrated Digital Loop Carrier ("IDLC") – do not afford this luxury. Although IDLC loops are, on a per loop basis, slightly less expensive than UDLC loops, IDLC loops cannot be cost-effectively unbundled. With IDLC, the

combined customer signals traveling over the DLC feeder cable are fed directly into the switch *before they are separated back out into the individual customer-specific signals*. The individual customer loops cannot be extracted and are not accessible on an unbundled basis before they are fed into the switch. Ameritech Wisconsin presented extensive evidence at the hearing that IDLC loops cannot be cost-effectively unbundled, and the FCC has itself concluded in the *UNE Remand Order* (¶¶ 206 and 217 & notes 399, 417 and 418) that there are serious "feasibility issues" that preclude IDLC loops from being unbundled in a cost-effective fashion.

The CLECs nonetheless eschew the evidence and the FCC's findings, and opt instead to press forward with their assertion that Ameritech Wisconsin's unbundled loop rates should be based on the assumption that *IDLC, rather than UDLC*, will be used to provision the loops. This position is, quite simply, detached from reality and should be rejected. Because IDLC feeder cable is integrated directly into the switch, it cannot be cost-effectively unbundled.

Subloops

Consistent with the FCC's pronouncements in the *UNE Remand Order*, Ameritech Wisconsin allows CLECs access to subloops at all points in its loop network at which access through a physical cross-connect is technically feasible: the central office, the serving area interface, the terminal, and the network interface device ("NID"). Ameritech Wisconsin has also voluntarily agreed to modify its network and allow access to subloops at the remote terminal ("RT"). It is not technically feasible to access copper pairs at the RT via a cross-connect, but Ameritech Wisconsin will provide an engineering controlled splice ("ECS"), which provides an inventoried cross-connect point where a CLEC can access the copper subloop at, or adjacent to, the RT. Ameritech Wisconsin's subloop offerings also allow CLECs to interconnect to and offer competitive services in multiple-dwelling units ("MDUs") and campus-style arrangements.

Costs associated with high frequency portion of loop ("HFPL") UNE

Ameritech Wisconsin's proposed charges to recover the HFPL-related OSS modification costs, and the non-recurring and recurring costs applicable to the HFPL UNE, are fully supported by the record, consistent with the law and should be adopted by the Commission.

Ameritech Wisconsin's proposed charge to recover HFPL-related OSS modification costs is consistent with the FCC's *Line Sharing Order,* which expressly permits incumbent LECs to recover from CLECs the cost of OSS modifications caused by the obligation to provide the HFPL as a UNE. In contrast, the CLECs' proposal to pay nothing for HFPL-related OSS modifications directly conflicts with the FCC's unequivocal holding that CLECs must pay ILECs for those costs. More specifically, the CLECs' argument that they should pay nothing for such OSS modifications, because Ameritech Wisconsin purportedly had to make the modifications for its affiliate, misses the point for at least two reasons. First, as stated above, the *Line Sharing Order* permits ILECs to recover these cost regardless of whether they were incurred to enable both affiliated and unaffiliated CLECs to gain access to the HFPL. Second, these costs were not incurred solely for Ameritech Wisconsin's affiliate, but were incurred to enable all CLECs to submit HFPL service orders.

Ameritech Wisconsin's proposed recurring line-at-a-time Ameritech Wisconsin-owned splitter charge, and its proposed recurring and nonrecurring cross-connect charges, also are fully supported by the record and consistent with the law. The CLECs' arguments in opposition to Ameritech Wisconsin's proposed charges rest on a misapplication or total disregard of the law and facts. With respect to cross-connect charges, the CLECs attempt to avoid paying for necessary cabling by arguing that splitters should be placed on the main distribution frame ("MDF"). As a matter of sound central office engineering practice, equipment such as a splitter

is not and should not be installed on the MDF. Ameritech Wisconsin's central offices must be planned and engineered to provide varied services – not just the HFPL. Mounting splitters on the MDF would promote only the narrow economic interests of CLECs using the HFPL UNE, to the exclusion of all others. In fact, placing the splitter on the MDF would be inefficient and lead to premature exhaust of the MDF. The CLECs' alternative proposal that cross-connect prices be set *as if* splitters are mounted on the MDF also must be rejected, (i) because the Eighth Circuit has held in *IUB III* that cost elements should reflect the ILEC's actual network configuration, and (ii) because, in any event, placement at the MDF would not occur in a perfectly efficient, forward-looking network – it could never be optimally efficient to do something that leads to premature exhaust and/or inefficient use of the MDF.

Ameritech Wisconsin's proposed monthly recurring charge for utilizing the HFPL UNE of 50% of the Commission-approved monthly recurring unbundled loop price (plus the incremental facilities and operations costs caused by sharing the loop) is appropriate for several reasons. Among other things, this charge provides a significant discount to CLECs in comparison to the price they would have to pay for an entire copper loop. This discount provides a significant incentive for additional data CLECs to enter the local market through use of the HFPL UNE. Moreover, setting the monthly recurring charge at a positive amount will correctly promote, rather than eliminate, the CLECs' incentive to invest in their own facilities. The CLECs' "zero price" proposal, in addition to being bad economics, would be patently unfair, and an unconstitutional taking of Ameritech Wisconsin's property.

Equally important, Ameritech Wisconsin's proposed monthly HFPL charge is fully consistent with the FCC's TELRIC pricing principles, which recognize that the cost of a loop used to provide both high frequency spectrum services and low frequency spectrum services is a

shared cost that must be reasonably allocated between the services that cause that cost. Indeed, because there are two dedicated connections on a single loop when a CLEC leases the HFPL, those two connections – the voice service and the data service – jointly cause the cost of the loop, and it is therefore reasonable to divide the cost of the loop equally between those two uses. Notably, allocation of 50% of the loop price to the HFPL also is consistent with the surrogate HFPL price set by the FCC in its Order approving the SBC/Ameritech merger, when access to the actual HFPL was not yet available.

It should be noted that the CLECs' assertion that they "are paying substantial charges for other elements required in line sharing such as OSS modifications, cross connects, splitter access and other tariffed items," which they claim supports their zero monthly HFPL price proposal, is ludicrous. The CLECs are proposing to pay nothing, or close to nothing, for each of the elements that they claim they are paying a "substantial charge for." As noted above, the CLECs are proposing a zero charge for both OSS modifications and the HFPL UNE itself. The CLECs also attempt to avoid paying for necessary cross-connects by urging the Commission to set the price for such facilities as if the splitter is placed on the MDF. And, with respect to "splitter access," the CLECs (without any record support) attack Ameritech Wisconsin's time estimates, installation costs and fill factors in an attempt to substantially reduce Ameritech Wisconsin's proposed prices. The CLECs clearly are trying to obtain the HFPL UNE for as close to nothing as possible in order to enjoy an unfair, artificial competitive advantage in the advanced services market.

- ***"Fiber-sharing"***

As both a legal and policy matter, the Commission should refrain from imposing any "fiber-sharing" obligations on Ameritech Wisconsin. The FCC, in the *Line Sharing*

Reconsideration Order, purposefully withheld creating *any* new unbundling obligations with respect to fiber facilities (or the DSL-related Project Pronto facilities that Ameritech Wisconsin plans to deploy) in favor of conducting additional rulemakings. *Id.*, ¶ 12. This Commission should stay its hand until the FCC has fully addressed the issue.

In any event, what the CLECs really are seeking – "unbundled" access to the Project Pronto DSL facilities, including fiber transport facilities – has nothing to do with the HFPL UNE. Rather, what the CLECs seek is the creation of *new* ILEC obligations involving Ameritech Wisconsin's planned packet switching DSL architecture (which, as we discuss below, are actually more like "co-engineering" obligations than just unbundling obligations). These new obligations would undermine the economic bases for Ameritech Wisconsin's planned deployment of that DSL architecture. That is, if the CLECs' Project Pronto "unbundling" demand were granted, Ameritech Wisconsin would be faced with an ill-advised Hobson's choice that is really no choice at all: To not deploy its DSL-related Project Pronto facilities, or to do so in a manner that it did not intend and, more importantly, in a manner that would be inefficient, more costly, and ultimately pointless. This not only would be contrary to the FCC's express goal "of allowing incumbents to deploy whatever network architecture they deem to be more efficient" (*Id.* at ¶ 11), it also would arguably conflict with section 253 of the Act (by precluding Ameritech Wisconsin from entering the new, competitive advanced services market on viable terms) or, in the alternative, with the Eighth Circuit's decisions in *IUB I*[7] and *IUB III* holding that ILECs are not required to build new facilities for, or provide superior quality service to, CLECs.

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[7] *Iowa Utils Bd. v. FCC,* 120 F. 3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.,* 525 U.S. 366 (1999) *("IUB I").*

Splitters on a shelf-at-a-time basis

Ameritech Wisconsin should not (and legally cannot) be required to provide splitters on a shelf-at-a-time basis when it elects to voluntarily provide them on a line-at-a-time basis. The FCC has never required ILECs to own and provide splitters to CLECs. Rather, the FCC has held that an ILEC, in its sole discretion, may choose to provide ILEC-owned splitters to CLECs. *Line Sharing Order*, ¶ 76; *Texas 271 Order*, ¶ 327. Even if the FCC had remained silent on the issue, this Commission cannot lawfully require Ameritech Wisconsin to purchase and deploy splitters at a CLEC's request, because the splitter cannot meet the "necessary" and "impair" tests of section 251(d)(2) and FCC Rule 317. Indeed, CLECs can purchase splitters themselves from the same vendors, and just as readily, as Ameritech Wisconsin. The CLECs' proposal that the Commission expand Ameritech Wisconsin's voluntary commitment to provide splitters on a line-at-a-time basis, and impose a much broader, and economically inefficient, mandatory obligation on Ameritech Wisconsin to provide splitters on a shelf-at-a-time basis, conflicts with federal law and the FCC's binding pronouncements that refuse to impose such an obligation.

In addition to being unlawful, the CLECs' proposal is contrary to sound policy. Specifically, Ameritech Wisconsin has legitimate technical and operational reasons for limiting its commitment to providing splitters on a line-at-a-time basis, including: (1) limitations of Ameritech Wisconsin's inventory system; (2) frame exhaust; and (3) inefficient use of capital for both Ameritech Wisconsin and CLECs. If ILECs that voluntarily choose to provide splitters on a line-at-a-time basis are forced to also provide them on a shelf-at-a-time basis, particularly where providing splitters on a shelf-at-a-time basis is inefficient, costly, and operationally impracticable (as the record here establishes), ILECs would have a strong incentive to exercise their option not to provide splitters at all.

The Commission also should reject the CLECs' so-called "line splitting" proposal. At the outset, there is a fundamental difference between the line splitting defined by the FCC in its *Line Sharing Order, Texas 271 Order* and *Line Sharing Reconsideration Order*, and the "line splitting" that the CLECs seek here. Under the CLECs' "line splitting" proposal, Ameritech Wisconsin would be required to *purchase and install* an Ameritech Wisconsin-owned splitter and *combine* the splitter with the unbundled loop and unbundled switch. In stark contrast, in its *Line Sharing Order, Texas 271 Order* (at ¶ 325) and *Line Sharing Reconsideration Order* (at ¶ 19), the FCC held that an ILEC has an obligation to accommodate line splitting *only in the situation where a CLEC purchases an entire loop and provides its own splitter.* Although Ameritech Wisconsin will accommodate line splitting in this manner, it has no legal obligation to accommodate the so-called "line splitting" proposed by the CLECs. It should be noted that the CLECs have pushed claims for their preferred flavor of "line splitting" in Illinois and Michigan, and the State commissions in both states rejected the proposal.

There are two additional reasons why Ameritech Wisconsin cannot be required to provide CLEC-defined "line splitting." First, the splitter is not a UNE, because it would not ordinarily exist in Ameritech Wisconsin's network and because, even if it did, it has not been subjected to (and could not meet) the "necessary" and "impair" standards of section 251(d)(2) and FCC Rule 317. Second, under the Eighth Circuit's decisions in *IUB I*, 120 F.3d at 813, and *IUB III*, 219 F.3d at 759, Ameritech Wisconsin cannot be required to provide new combinations of network elements. The CLECs' "line splitting" proposal, however, would do just that, by requiring Ameritech Wisconsin to purchase and install a splitter, separate currently combined UNEs (UNE DSL-capable loop and the UNE switch port), and re-combine those UNEs with the new "UNE splitter."

Unbundling of Project Pronto

Project Pronto is a $6 billion SBC network enhancement initiative designed to extend the reach of DSL services to millions of customers by installing new fiber facilities deeper into the network. Despite SBC's massive voluntary investment planned for Project Pronto and its offering to CLECs a new wholesale advanced services option at TELRIC prices via the Broadband Service, the CLECs seek the so-called "unbundling" of the Project Pronto DSL architecture and the so-called "collocation" of CLEC-owned line cards in Ameritech Wisconsin's DSL-enabled Project Pronto Remote Terminal Equipment ("NGDLCs"). We believe that the issue of "unbundling" Project Pronto is outside the scope of this proceeding. If the Commission nevertheless addresses it, the Commission should keep paramount the significant adverse effect that adoption of the CLECs' proposal would have on the future of the advanced services market in Wisconsin.

In a nutshell, adoption of the CLECs' "sharing" proposals for Ameritech Wisconsin's planned Project Pronto DSL facilities, whether those proposals be labeled "unbundling" or "collocation," would likely sound the death knell for Ameritech Wisconsin's continued deployment of Project Pronto DSL facilities, as well as similar new investment in DSL facilities by other Wisconsin ILECs. This not only would harm CLECs providing data services but, more importantly, would harm all Wisconsin consumers, by depriving them of a competitive choice for obtaining high-speed Internet access.

The advanced services market is a dynamic one, already marked by robust competition between and among alternative emerging technologies, such as cable modem service, wireless services, satellite service and Digital Subscriber Line ("DSL") service. Cable modem service is by far the dominant advanced services technology today, and cable modem, wireless and satellite

service providers do not face any network sharing obligations. At issue here is whether an incumbent telephone company, when it makes the decision to invest in the new equipment and infrastructure required to provide DSL advanced services and compete with cable companies and other unregulated advanced services providers, should be subjected to asymmetric regulation and forced to largely surrender the use of its new infrastructure to other DSL providers, each of whom could have invested in their own new DSL equipment just as easily as the incumbent. From both a legal and policy perspective, the answer to this question must be a resounding "no."

Putting aside the adverse effect that adoption of the CLECs' proposal would have on competition and the deployment of Project Pronto DSL facilities in Wisconsin, the CLECs' proposal cannot withstand legal scrutiny for at least seven reasons.

First, the CLECs' proposal conflicts with section 706 of the Act and federal policy regarding the promotion of advanced services deployment because it would deter and likely preclude Ameritech from making the investment necessary to deploy Project Pronto, and therefore is preempted.

Second, the CLECs' proposal would require the "unbundling" of packet switching functionality, in violation of FCC Rule 319. It is undisputed that if CLECs obtain unbundled access to Project Pronto, they will obtain access to packet switching: (i) the DSLAM (Digital Subscriber Line Access Multiplexer) functionality (which the FCC expressly includes in its definition of packet switching) resident in the NGDLC; (ii) the packet switching functionality of the central office optical concentration device ("OCD"), which the FCC has recognized to be an ATM *packet switch;* and (iii) the packet switched fiber transport between the NGDLC and the OCD. Federal law prohibits this Commission from ordering unbundled access to packet switching unless it finds that all four conditions enumerated in FCC Rule 319(c)(3)(B) are

satisfied. Here, none are satisfied. This is most graphically true in the case of condition 3, which requires that the ILEC (here Ameritech) *refuse* to permit collocation of a CLEC-owned DSLAM in the ILEC's remote terminal. Not only does Ameritech permit such collocation, but it has committed to construct additional space to accommodate such collocation if existing space at the remote terminal is inadequate. Accordingly, this Commission cannot lawfully give the CLECs what they demand.

Third, the CLECs have failed to establish the each proposed new UNE satisfies the mandatory "impair" test of section 251(d)(1) of the federal Act and FCC Rule 317. The CLECs' argument that the "impair" test has been met relies on unsupported, vague, and subjective claims based on speculation about future network design and future market conditions. The FCC, however, requires an objective, fact-based analysis of existing network facilities and existing market conditions. Given that the pre-existing options available to CLECs for providing DSL service will remain unchanged by Ameritech Wisconsin's deployment of Project Pronto DSL facilities, and that Ameritech Wisconsin's Broadband Service offerings will provide additional options for providing DSL service, the CLECs' Project Pronto UNE/line card collocation proposal does not and cannot satisfy the mandatory federal law "impair" standard.

Fourth, the CLECs' Project Pronto "unbundling" and line card "collocation" proposals fail to satisfy the standards of section 261(c). That section requires that any state unbundling requirement be "necessary to further competition" and "not inconsistent with . . . the [FCC's] regulations." As explained above, the advanced services market is already highly competitive, and CLECs have numerous options for offering DSL services. Accordingly, the CLECs' Project Pronto "unbundling/collocation" proposal is not "necessary to further competition." Moreover, as we demonstrated, it clashes head on with relevant FCC regulations.

Fifth, the CLECs' Project Pronto "unbundling/collocation" proposal threatens to illegally require Ameritech Wisconsin to install or construct new facilities solely to meet the CLECs' "unbundling" request, in violation of the Eighth Circuit's holdings in *IUB I* and *IUB III.* Specifically, several of the CLECs' proposed "UNEs," including the CLECs' proposed UNE for data transmission over TDM circuits, and for PVCs and PVPs at every QoS class, cannot be unbundled or supported using the planned Project Pronto architecture. Rather, they would require Ameritech Wisconsin to build and deploy additional facilities in order to provide those "UNEs." Similarly, the CLECs' "collocation" proposal likely would require Ameritech Wisconsin to deploy, on an RT-by-RT basis, a new version of the overall software that runs the entire NDGLC system, including the line cards. The CLECs' "collocation" proposal also would cause physical and bandwidth exhaust that ultimately would require Ameritech Wisconsin to deploy additional facilities that otherwise would not be necessary. Under the law, Ameritech Wisconsin cannot be required to deploy new, different, or additional facilities and software.

Sixth, the CLECs' so-called NGDLC line card "collocation" proposal does not meet the legal standards for collocation. Among other things, the CLECs' proposal unlawfully would allow CLECs to dictate where "collocation" equipment is located in Ameritech Wisconsin's central office, in violation of the D.C. Circuit's decision in *GTE Services v. FCC,* 205 F.3d at 426 (D.C. Cir. 2000). The CLECs' "collocation" proposal also fails to satisfy the requirements of section 251(c)(6) of the Act, which permits collocation of only such "equipment" as is "necessary for interconnection or access to unbundled network elements." Not only are line cards not "necessary" for interconnection or access, they are not even used for it. They are not connected to any CLEC-owned facilities and hence cannot facilitate interconnection between new networks; for the same reason, they cannot be used to integrate Ameritech's network

facilities in the CLEC's – as what happened, for example, when a CLEC obtains "access" to an unbundled loop by means of a cross connect to equipment that is connected to the CLEC's switch. Instead, line cards are used solely to dictate the nature of the end-to-end DSL service that the CLECs want Ameritech to provide for them.

Seventh, adoption of the CLECs' Project Pronto UNE/line card collocation proposal would violate section 253 of the Act, which prohibits any state regulation or legal requirement that "may prohibit or *have the effect of prohibiting* the ability of *any* entity to provide *any* interstate or intrastate telecommunications service." 47 U.S.C. § 253(a) (emphasis added). Adoption of the CLECs' proposal would do just that by effectively prohibiting Ameritech Wisconsin from competing in the new advanced services market through its planned provision of the wholesale Broadband Service.

Special Construction/Facilities Modification/Loop Conditioning Charges

Ameritech's proposed standard loop prices address the standard situation, in which a voice-grade loop is simply transferred from Ameritech's switch to the CLEC switch. In this docket, Ameritech proposes additional charges for three special situations: (1) unbundling loops served by integrated digital loop carriers ("IDLC"); (2) constructing an entirely new facility; and (3) conditioning loops to carry advanced xDSL service.

Integrated Digital Loop Carriers. Unbundling a loop served by IDLC is quite different from unbundling a traditional individual loop. As discussed above, an individual loop has its own connection to the Ameritech switch, so that connection can be moved to a CLEC switch. An IDLC loop, though, shares a connection with many other loops. That connection cannot be moved without disturbing the other loops attached to the IDLC, which still belong to Ameritech. Thus, unbundling an IDLC loop requires Ameritech to remove the customer from the requested

loop and to place it on a parallel non-IDLC facility that has its own separate connection. In most cases this can be done without incurring extra cost, for example by moving the customer to a spare facility that is already in place.

This issue deals with a situation that arises less than one percent of the time: where there is no non-IDLC facility on which the requested IDLC loop or loops can be placed but the CLEC nonetheless asks Ameritech to design and construct such a facility. The issue is whether Ameritech is entitled to recover the costs it incurs on the CLEC's behalf. The FCC and the Eighth Circuit both agree that it is. The FCC's *First Report and Order* (¶ 384) was unequivocal in stating that, while incumbent LECs must provide unbundled access to loops served by IDLC, the cost of "separating out individual loops from IDLC facilities . . . will be recovered from requesting carriers." Likewise, the Eighth Circuit – in its capacity as a Hobbs Act court with exclusive authority to review the FCC's pricing rules – has held that incumbent LECs are entitled to recover the cost of providing, and if necessary modifying, their existing facilities to provide unbundled access. *IUB III*, 219 F.3d at 750-51.

The CLECs try to evade their obligation of compensating Ameritech Wisconsin by contending that Ameritech Wisconsin's standard prices for unbundled loops already include the costs associated with unbundling IDLC. That cannot be true. The standard prices, and the supporting cost studies, are also before the Commission in this proceeding. Ameritech's cost studies assume a "least cost" network for a multiple carrier environment, *i.e.*, one in which there is no IDLC, and by definition none of the unbundling costs that are unique to IDLC. The CLECs themselves strenuously object to the UDLC assumption and insist that the cost studies should assume a network constructed entirely with IDLC facilities.

New Construction. Where a CLEC requests construction of a new facility, Ameritech evaluates the CLEC request pursuant to its Facility Modification Policy, and may (but may not) offer to perform the work. Once again, the issue is whether Ameritech is entitled to recover the costs it incurs on the CLEC's behalf, and once again the answer provided by the 1996 Act is yes. As the Eighth Circuit has held, the Act requires Ameritech *only* to provide access to its existing network, not to construct new network facilities at the beck and call of CLECs. *IUB I*, 120 F.3d at 813. Thus, Ameritech proposes cost recovery consistent with PSCW-approved retail tariffs; in other words, CLECs would pay construction charges where Ameritech would assess construction charges on its own retail customers. That approach is nondiscriminatory: given that Ameritech pays for constructing its own facilities for its own operations, it is only fair that CLECs ultimately bear the cost of constructing facilities for their operations. The carrier that requests construction and uses (and profits from) the facilities constructed should pay the associated cost. By contrast, the CLECs essentially propose that Ameritech be forced to construct new network facilities at its competitors' request for free – an approach that discriminates in the CLECs' favor, and that is flatly prohibited by *IUB I*, not to mention the Act, fundamental constitutional principles and common sense.

As is their custom, the CLECs assert that Ameritech should do construction work for free, on the ground that the costs are already included somewhere within Ameritech's standard prices for unbundling loops. That is absurd. The standard price for a loop is, after all, based on the pricing rules of the 1996 Act, and the Act requires only access to *existing* facilities. The Act does not require incumbent LECs to construct new facilities, and *a fortiori* rates developed in accordance with the Act's pricing rules do not and could not reflect such construction.

Conditioning. Many of the loops in Ameritech's existing network are made of copper, and they have been engineered and constructed to carry voice traffic. A CLEC may, however, want to use the loop to carry high-speed data traffic. Accordingly, the CLEC may ask Ameritech to "condition" the loop: that is, to remove certain features (such as load coils, bridged tap, and repeaters) that are designed to facilitate voice service but inhibit data traffic. The FCC has repeatedly held that a carrier that wants conditioning must also pay for it. *First Report and Order*, ¶ 382 ("The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning"); *UNE Remand Order*, ¶¶ 192-193 ("Thus, under our rules, the incumbent should be able to charge for conditioning such loops."); *Line Sharing Order*, ¶ 87 ("[W]e conclude that incumbent LECs should be able to charge for conditioning loops when competitors request the high frequency portion of the loop."). The FCC's holdings are fully consistent with the Eighth Circuit's decision that loop prices must reflect "the cost of providing the actual facilities and equipment that will be used by the competitor." *IUB III*, 219 F.3d at 751.

As for the amount of conditioning cost, the Commission should adopt Ameritech's proposed prices. These prices are based on time studies of the actual tasks required to properly and safely condition a loop, and they reflect extensive observation and interviews of the field personnel that actually do the conditioning work. The cost studies were also reviewed by the Staff of the Missouri commission, which made 15 field visits to observe and time conditioning activities and concluded that the time estimates proposed were, if anything, conservative. By contrast, the CLECs' cost "studies" were not based on any real-world observation or experience, but constructed out of whole cloth. They underestimate, or even omit, the time required for tasks that are essential to safe and proper work.

Switching Cost Inputs and Line Port Issues

There are two principal issues that separate the CLECs and Ameritech with respect to the costs – and rates – for unbundled local switching ("ULS"):

1. The weighting between replacement and growth lines that should be used in coming up with the weighted average cost of local switching. The CLECs want a weighting heavily, and improperly, biased in favor of replacement lines – which are much less expensive; this yields an artificially low weighted average cost. Ameritech Wisconsin, on the other hand, advocates a weighting that follows strictly the split between replacement lines and growth lines actually specified in its contracts with its switch vendors – which yields a weighted average that represents what Ameritech Wisconsin actually pays for switching.

2. Whether ULS costs should be recovered through a single flat rated port charge (which the CLECs advocate) or through a two-part rate structure: a flat rate for the line port and a minutes of use ("MOU") charge for usage (which Ameritech proposes).

Weighted average price for switching. Ameritech Wisconsin has three switch vendors: Nortel, Siemens and Lucent. Ameritech Wisconsin has two contracts with each: (i) a replacement contract – pursuant to which the switch vendor commits to replace specific 1A analog switches with digital switches in accordance with a defined timetable; and (ii) a Partners in Provisioning ("PIP") contract – pursuant to which the vendor commits to provide growth lines on *its* switches over a specific time period. The basic prices under both contracts are based on a per line charge. The per line price is much lower for replacement lines; in fact, Nortel charges **[Begin Conf**********End Conf]** for replacement lines – its replacement contract specifies that it will replace the identified 1A analog switches for **[Begin Conf********End Conf]** per line.

The reason for this two-tiered pricing scheme is simple. If supplier A provides a switch, only A's equipment can be used to provide growth lines for that switch. Accordingly, the vendors compete for Ameritech's growth line business by offering bargain basement prices for replacement lines – and, in the case of Nortel, **[Begin Conf**********End Conf]**.

This is not to say that the switch vendors do not have a "single price" per line which they need in order to cover their costs and earn a profit. They clearly do. The vendors' costs are the same irrespective of whether the line is a replacement line or a growth line. So they need prices which in the aggregate will give them sufficient revenue at the end of the day to recover these costs and earn their desired profit. And here is how they accomplish that: they know, with precise certainty, how many replacement lines they are committed to provide; the replacement contract specify the switches in question, and the vendors know the precise number of lines in each switch and the timetable for providing the replacement switch. As for the growth lines, the vendors know with reasonable certainty how many growth lines will be needed in each year covered by the PIP contracts. Accordingly, when a vendor agrees to price X for replacement lines, and price Y for growth lines, the vendor knows with reasonable certainty the total revenue it will receive in current dollars over the life of the contracts. And by dividing that total revenue number by the total number of lines, that vendor can readily determine the weighted average "single price" it will receive. If that price is sufficient to recover the vendor's per line costs and earn a profit – fine; if it is not, the vendor will adjust its prices so that the weighted average "single price" *is* sufficient to accomplish that goal.

Ameritech has developed a model that determines what that "single price" is for all of its switch vendors. That is, it computes the "single price" for each (in the manner discussed above), and then weights these "single prices" based on the percentage of lines that each vendor will

provide, to come up with a "single price." That price is then applied to *all* of Ameritech's switch lines, to come up with a per line cost for the entire "fleet." That cost is forward-looking; it is the cost that Ameritech would incur if it went to its vendors today and asked them to replace the entire switch network – because it is based on the "single price" that the vendors would need on a per line basis to satisfy their revenue requirements.

The CLECs agree with everything that Ameritech did – with one exception. They theorize that if the vendors are willing to provide in the aggregate the number of replacement lines specified in the replacement contracts, say 2 million lines in all, at the prices specified in those replacement contracts, the vendors would be willing to replace the other more than 14 million existing lines in Ameritech's network for the same price. Indulging this assumption yields a much lower "single price" and therefore a much lower per line forward-looking cost, which obviously is the CLECs' desired goal.[8] But the CLECs' premise is patently absurd. The vendors plainly would not provide more than the number of replacement lines specified in the replacement contracts at the "low ball" replacement line prices. If they did, not only would they fail to earn a profit; they would fall far short of even covering their costs. Consider Nortel: under the CLECs' hypothesis, Nortel, which supplies roughly half of Ameritech's switches region wide, would be willing to provide about 8.5 million lines for **[Begin Conf*********End Conf]**! No discussion is needed to show that that would never happen. Accordingly,

[8] The "difference" between the CLECs and Ameritech can be summarized as follows: Ameritech comes up with its "single price" by multiplying the replacement lines specified in the contracts by the replacement price, multiplying the expected number of growth lines by the growth line price specified in the PIP contracts, adding the two, and dividing the sum by the total number of replacement lines and growth lines provided for under the contracts. The CLECs, on the other hand, do the same calculation, except they multiply the replacement line price by the sum of the number of lines specified in the replacement contracts and *all existing lines of switching in the network.*

Ameritech's weighting (and the prices and costs it yields) should be adopted, and the CLECs' proposal should be rejected.

Usage Costs. With respect to this issue, it is undisputed that the switch imposes two kinds of investment costs: one for the line port and one for the equipment necessary to transmit the signal or message to and from the line port. A line port is dedicated to a specific user; it is appropriate, therefore, to recover its cost through a flat rate charge. The switch equipment, however, is not dedicated to any one user. It is shared by all users – but not necessarily equally. Some use it very little; others use it extensively. The question in this proceeding is how the underlying investment cost for that equipment should be recovered.

The CLECs say that it need not be recovered at all – that it is sufficient to charge a single flat rated per port charge irrespective of how much (or how little) the switch's capacity is used. Ameritech, on the other hand, proposes that this investment be recovered through a small MOU usage charge. Usage consumes resources – *i.e.*, the switch's capacity to carry traffic. The greater the usage, the greater the resources consumed – and the greater the investment cost caused by the usage. Ameritech's proposal is the only way to ensure that each user pays for the costs it causes. If the CLEC proposal – *i.e.*, basically usage for free – were accepted, the CLECs purchasing ULS could market to high usage customers only, and force Ameritech to subsidize them – because Ameritech does not have the luxury of targeting only high usage customers; it must serve *all* customers.

In fact, that is precisely the CLECs' strategy. As the FCC's data makes clear, CLECs have targeted primarily large and medium-sized businesses. Indeed, 60% of their customers fall in this category, while only 20% of the ILECs' customers do. These business customers obviously make much greater use of the shared switching equipment than the average Ameritech

customer. Accordingly, if the CLEC proposal were adopted, the Ameritech (non-ULS) ports would subsidize the CLEC (ULS) ports. Moreover, not only are the CLECs' customers, on average, high-usage users, their use is concentrated during peak times (*i.e.*, business hours). And if usage is basically free, which it would be under the CLECs' proposal, it is reasonable to expect peak usage will be greater than it would otherwise be. (It is well accepted that when a resource is free, it tends to be overused.) Greater-than-expected peak usage will cause greater future usage investment costs – which, again, under the CLECs' proposal would be borne by Ameritech alone, and not the true cost causers (the CLECs and their high-usage customers).

The FCC recognized in paragraph 810 of the *First Report and Order* (and confirmed on reconsideration of that order) that incumbents' incur usage-based switching costs, and that they should be permitted to charge usage-based rates to recover these costs. Likewise, *every* state to consider the issue has concluded that usage imposes a cost – and all but one state has adopted a bifurcated rate structure that recognizes this: a flat rate for the port and an MOU rate for usage. Wisconsin should do likewise. Adherence to well accepted principles of cost causation requires no less.

Transport-related Issues

The primary transport-related issue concerns Ameritech Wisconsin's calculation of trunk investments. Ameritech and the CLECs agree that the number of trunks should be based on the anticipated amount of inter-office usage. But they differ on trunk investments and on fill factors. With respect to the first, the CLECs' expert, Dr. August Ankum, recently admitted in an Illinois proceeding that involved the same issue as here (trunk investment and resulting shared transport rates) that he made a mistake that resulted in substantially understating trunk investment costs. After correcting for the error, his proposed shared transport rate more than doubled. When asked

about the Wisconsin proceeding, Dr. Ankum conceded that he had not yet made a similar correction in his Wisconsin calculations. Accordingly, the Commission should discount entirely Dr. Ankum's (and the CLECs') proposed shared transport rates.

With respect to fill factors, Ameritech Wisconsin's fill factor for trunk ports is **[Begin Conf *** ******** End Conf]**, a reasonable projection of actual future trunk port usage. Not content with this extremely favorable (from the CLECs' perspective) fill factor (the higher the fill factor, the lower the rate charged to the CLECs), the CLECs go for broke and seek a **[Begin Conf *** ******** End Conf]** fill factor – essentially no fill factor at all. This is absurd. No piece of equipment is ever utilized at **[Begin Conf *** ******** End Conf]** capacity over the long term.

The CLECs also believe Ameritech Wisconsin's blended transport rate is too high because it is based on an average call distance for local calls that is allegedly overstated. That average distance is not overstated. And even if it were, it would not matter. Any increased accuracy gained by adopting the CLECs' proposal would be lost due to rounding, and would likely be more than offset by the increased cost of re-running the study.

Reciprocal Compensation

The Wisconsin Commission's November 8, 2000, order in Docket No. 05-TI-283 ("Reciprocal Compensation Order") addresses the appropriate allocation of switching and termination costs between setup and usage for reciprocal compensation. The Reciprocal Compensation Order (at 16-17) requires as follows:

> [T]he parties shall adopt a rate for reciprocal compensation that recovers the cost associated with setting up a call (e.g., establishing a circuit, and creating a billing record) once per call, in the first minute of the call. During subsequent minutes of a call, the only cost recovered would be that associated with duration, or the cost to maintain the circuit and transmit

> the content of the call. A charge related to call duration may be recovered in the first minute of the call as well.

Ameritech Wisconsin has implemented this mandate in its reciprocal compensation cost study. That study establishes two rates. The first is a single per call rate designed to recover the costs that are incurred once per call irrespective of call length. These one time costs are those explicitly recognized by the Commission to fall in this category: establishing a circuit and creating a billing record. They also include non-conservation time ("NCT"): the time after the call is placed and the switch activated but before the called party answers. The cost associated with this NCT clearly occurs each time a call is made, and just as clearly does not in any way depend on the call's duration. Accordingly, this cost should be recovered (if it is to be recovered at all) in the upfront one time charge.

The second rate is a significantly lower one that is completely usage-sensitive, as required by the Commission's Reciprocal Compensation Order. It is a charge that varies directly with the call's duration and is therefore expressed in terms of a charge per minute of use (MOU). As required by the Reciprocal Compensation Order, this rate element recovers only the cost to maintain the circuit and transmit the content of the call.

Nonrecurring Costs

Nonrecurring costs are one-time expenses associated with the work activities performed to initiate and provision telecommunications services and unbundled network elements. A proper nonrecurring cost model focuses on three interrelated items: the *tasks* involved, the *activity times* needed to perform the tasks included, and the *probability* that a particular task will be required.

While Ameritech and the CLECs do not have significant disagreements regarding the basic methodology underlying a nonrecurring cost model, there is significant disagreement

regarding the actual inputs that should be used. Of the two competing models, only Ameritech Wisconsin's model uses inputs that are consistent with the 1996 Act and applicable FCC rules.

Consistent with the 1996 Act, Ameritech Wisconsin's model:

- Utilizes times identified from various studies, including time and motion studies, of the activities actually being performed by Ameritech Wisconsin in the field. Ameritech Wisconsin's activity times are consistent, employ forward-looking efficiencies and are in line with those used by AT&T in studies AT&T has performed on its own behalf.

- Uses flow through assumptions for ordering and provisioning UNEs based on Ameritech Wisconsin's actual network and experience, achieving results consistent with those found in other states. The flow through assumptions used by Ameritech Wisconsin are also consistent with those identified by AT&T for its network in its own cost studies.

- Defines forward-looking efficient Operations Support Systems (OSS) to be the expected system or process enhancements Ameritech Wisconsin would be able to put in place over the foreseeable future and appropriately determines costs on that basis.

The CLEC Non-Recurring Cost Model ("NRCM"), on the other hand, fails to properly calculate nonrecurring costs. In brief, the model fails in each of the ways the Ameritech Wisconsin model succeeds. It uses estimates of activity times which are unreasonably low; it assumes a utopian-like level of flow through; and it fails to properly compensate for OSS-related costs. To make any use of the NRCM, the Commission would need to drastically change the NRCM's OSS assumptions, flow through assumptions, and activity times. In rejecting the CLEC NRCM, the Commission would be joining several other state utility commissions who have evaluated and subsequently rejected the CLEC NRCM.

Of particular note is the fact that the CLEC NRCM does not rely on cost studies performed by AT&T, one of the principle advocates of the NRCM. In fact, AT&T's Task Oriented Cost ("TOC") studies confirm the reasonableness of Ameritech Wisconsin's model inputs and the unreasonableness of the CLECs' inputs. These TOC studies identified activity

times and fall out rates consistent with those produced by the Ameritech Wisconsin model. And some of the "experts" who developed the TOC studies were "experts" who developed the assumptions of the CLEC NRCM. Despite this, the CLECs did not use the data from the TOC studies. This should not come as a surprise, though, because the TOC studies *support* Ameritech Wisconsin's inputs, and demonstrate that the NRCM's inputs are not reasonable.

Collocation Costs

As with nonrecurring costs, Ameritech Wisconsin and the CLECs have competing cost models. And as with the dispute about the competing nonrecurring cost models, the parties differ significantly about the appropriate values to use as inputs into their respective collocation cost models. However, the parties also have a more fundamental disagreement about the manner in which collocation costs should be calculated.

Consistent with the 1996 Act, FCC regulations and applicable legal authority, Ameritech Wisconsin has calculated the forward-looking costs that it will incur to provide collocation to CLECs. The CLECs, on the other hand, rely on a hypothetical central office that, by the CLECs' own admission, does not exist anywhere – in SBC's network or the network of any ILEC. The CCM "model" central office, in fact, bears little resemblance to the typical central office that Ameritech Wisconsin uses, and the modelers of the CCM made no effort to consider Ameritech Wisconsin's central offices. The Ameritech Wisconsin model, on the other hand, is appropriately based on actual central offices and an existing, real-life network, and therefore calculates costs that an efficient firm employing those offices would reasonably expect to actually incur.

At the same time, Ameritech Wisconsin's model is forward-looking. Ameritech Wisconsin has taken into account efficiencies that it expects to achieve in the future and has

prospectively adjusted its activity times, probabilities and material and labor rates. The CLEC model, on the other hand, is not based on forward-looking costs – it is based on hypothetical costs incurred in a central office/network configuration that does not, and probably never will, exist.

The defects in the methodology of the CCM are numerous. It fails to reflect best practices, notwithstanding the conclusory assertion made by its developers that it does. It inappropriately recovers one-time expenses on a recurring basis. And the assumptions used by the CCM for the various forms of collocation are faulty. All of these defects, and more, are discussed at length in Ameritech Wisconsin's Initial Brief.

Moreover, the inputs used by the CCM are faulty. The CCM relies on data from Canadian vendors whose bids were solicited solely for the purpose of creating a cost model. The Ameritech Wisconsin model, on the other hand, uses costs and activity times actually incurred by those who have performed the work in question. The CCM also uses data that is several years old and which, in most cases, was intentionally not updated. The CCM also omits whole categories of costs, and, where it does include costs, significantly understates them and fails to provide sufficient documentary support for the costs its claims. Finally, the CCM knowingly misuses R.S. Means building construction data to further understate costs.

The parties also disagree about what forms of collocation should be priced. The CLECs inappropriately attempt through this docket to set rates for forms of collocation that Ameritech Wisconsin has not agreed to provide and which this Commission has not ordered Ameritech Wisconsin to provide. The CLECs, moreover, have not presented any testimony or proposed terms and conditions relating to these additional forms of collocation. Thus, there is no basis for

the Commission to determine whether, for instance, common collocation or adjacent off-site collocation, should be available in Wisconsin, and if so, at what rates.

In sum, the Commission should set rates for collocation based on Ameritech Wisconsin's collocation cost model, as set forth in the Ameritech cost studies that are part of the record in this proceeding.

I. DEVELOPMENT OF COST STUDY PRINCIPLES AND REQUIREMENTS ISSUES CONSISTENT WITH 47 U.S. § 252(D)

A. What are the appropriate principles and requirements to be used to develop cost studies pursuant to 47 U.S. § 252(d) and relevant State Law?

(1) What are the differences between the TELRIC and TSLRIC methodologies and how or when should the methodologies be applied in the determination of UNE prices?

The CLECs devote significant effort to rebutting an argument we never make – *i.e.*, that the Commission should reject TELRIC, and base costs and rates on Ameritech's actually-incurred (as opposed to hypothetical) costs. Ameritech Wisconsin recognizes that currently effective federal law requires the Commission to employ and apply TELRIC in this proceeding. And consistent with that, Ameritech Wisconsin has advocated the adoption of cost principles and inputs, and at the end of the day rates, based on and consistent with TELRIC. Ironically, it is the CLEC Coalition that is asking the Commission to ignore and defy federal law – and establish rates that fail to comply with TELRIC, rates that are significantly lower than a proper application of the FCC's methodology would generate.

B. General issues

(1) Cost of Capital

Ameritech Wisconsin's proposed cost of capital should be adopted by the Commission. The CLECs have not addressed this issue, either in the record or in their opening brief. Accordingly, Ameritech Wisconsin rests on its Initial Brief, which demonstrated (among other things) that Staff's proposed debt-to-equity ratio would deprive Ameritech Wisconsin of its AAA

bond rating and therefore is (by Staff's own admission) inappropriate, reserving the right to respond to any new argument raised in the CLEC Reply Brief.

(a) What percentages of debt and equity should be used in determining the weighted cost of capital that is incorporated into the annual cost factors in the models?

See supra.

(b) What return on equity and return on debt should be used?

See supra.

(2) How should the mark-up for joint and common costs be determined?

Ameritech Wisconsin, like every other firm that produces more than one product or service, incurs both direct and indirect costs. More specifically, it incurs for each product or service it produces direct incremental costs – costs which the firm would avoid entirely if it ceased producing the product or service in question. And the firm also incurs indirect, or "joint and common costs" – "costs that are incurred in connection with the production of multiple products and services" and that will not be avoided (and which may in fact remain completely unchanged) were the firm to abandon the production of any particular product or service. *First Report and Order*, ¶ 676.

The FCC has recognized that both types of costs must be recovered for a firm to remain in business. Specifically, the FCC has recognized that "setting the price of each discrete network element based solely on the forward-looking incremental costs directly attributable to the production of individual elements will not recover the total forward-looking costs of operating the wholesale network." *Id.* at ¶ 694. Accordingly, in addition to the TELRIC for each network element, the FCC has mandated that the price for each element, pursuant to § 252(d)(1) of the Act, "shall" include "a reasonable measure of [joint and common] costs." *Id.*

Consistent with these requirements, Ameritech Wisconsin has constructed a model that relies on publicly available (and therefore easily verifiable) data and information, and utilizes an easily understood methodology. This model closely resembles the top-down approach presented by Staff in Case No. 6720-T1-120 (the "SGAT case"). *See* Tr. Vol. 2 at 828. Additionally, the model explicitly excludes costs that should not be allocated to UNEs and interconnection. *See id.* Furthermore, the model calculates relationships between retail and wholesale investments and expenses, explicitly adjusts these relationships to incorporate forward-looking cost savings, inflationary and deflationary factors, SBC/Ameritech merger savings, and converts book costs to current costs. *See id.*

The CLECs chose not to offer their own joint and common cost study[9], preferring instead to propose various "adjustments" to Ameritech Wisconsin's model. The combined effect of these various adjustments is to force the model to yield a dramatically lower joint and common cost factor: **[Begin Conf**********End Conf]** rather than Ameritech Wisconsin's proposed **[Begin Conf**********End Conf]**. These adjustments can be lumped into two categories: ones that shrink or deflate the numerator; and ones that inflate the denominator. Both types of adjustments go in the same direction. Both make the fraction smaller, which reduces the joint/common cost percentage markup. As we demonstrated in our Initial Brief, all of the adjustments are flawed and should be rejected. *See* AW Br. at 17-19, 23-35.

To shrink or deflate the numerator, the CLECs:

- eliminate with no justification substantial *wholesale* product costs related directly to provisioning and supporting the use of UNEs (*i.e.*, quintessential joint costs);

[9] The CLECs do criticize the top down methodology – suggesting that a bottoms up approach would be better. The CLECs made precisely the opposite criticism in 1996 and 1997 when confronted with Ameritech's original joint and common cost study – a study based on a bottoms up approach. Then, the CLECs carped that a top down methodology would have been preferable.

- eliminate tens of millions of dollars of common costs based on the unsupported assertion that those sums *might* contain a small amount of direct costs attributable to an unregulated service;

- arbitrarily reduce Ameritech's common costs by 24% to reflect cost savings that increased efficiency will bring – while ignoring altogether that Ameritech's model already incorporates anticipated savings in roughly the same amount;

- remove expenses that have already been removed from certain clearance accounts; and

- improperly eliminate legal and related expenses that Ameritech is forced to incur by the 1996 Act and proceedings such as this one, and force retail customers to bear the entire cost.

To inflate the denominator, the CLECs' Mr. Behounek increases substantially the basket of direct, incremental costs which Ameritech will recover in the TELRIC portion of its rates. This is indeed astounding. Through all of their other witnesses, the CLECs have chopped away at this very basket of costs, in order to shrink the direct, incremental costs and thereby reduce substantially the TELRIC portion of Ameritech's rates. The CLECs want to have it both ways. They want a small pool of direct, incremental costs when the Commission is determining the TELRIC portion of Ameritech's rates. And they want an artificially inflated pool of these costs when the Commission is attempting to determine the joint/common cost markup. The Commission should see through this "trick" and reject it.

As we pointed out in Ameritech's Initial Brief, a quick review of available benchmarks, including ones advocated by the CLECs themselves, demonstrates the reasonableness of Ameritech Wisconsin's model and its results:

- **Wisconsin** – In 1996, first AT&T and then MCI (now WorldCom) engaged in extensive arbitrations before the Commission regarding the terms and conditions of § 252 interconnection agreements with Ameritech Wisconsin. Using the identical standard applicable here, the Commission determined that a "reasonable measure" of joint and common costs was 27% in the AT&T arbitration and 29% in the later MCI arbitration. *See* Tr. Vol. 2 at 833.

- **Other States** – State commissions in Illinois and Ohio arrived at similar conclusions in generic cost proceedings (similar to the instant proceeding) which spanned from 1996 through 1998. Under the same standard that is applicable here, the Illinois commission adopted a joint and common cost markup of 34.55%, and the Ohio commission adopted one of 33.64% – both higher than what Ameritech Wisconsin proposes here. *See id.*

- **Hatfield Model** – Both AT&T and WorldCom have supported the use of the Hatfield Model throughout the country for determining pricing rates consistent with the 1996 Act. *See id.* at 836. The Hatfield Model derives markups for Ameritech Wisconsin for corporate overhead and total common loadings of 10.4% and 24.3%, respectively. Ameritech Wisconsin's own joint and common cost model derives comparably lower loadings: 4.96% for corporate overhead and 19.59% for total common loadings.

- **AT&T** – The CLECs' own joint and common cost witness, Mr. Behounek, has dredged up this benchmark that makes Ameritech Wisconsin's proposal appear overly conservative. Asserting that AT&T in the late 1990s and Ameritech Wisconsin today are comparable for purposes of joint and common costs, Mr. Behounek noted that AT&T in 1999 claimed to have reduced its SG&A (Selling, General & Administrative) expenses by 24% over a 2-3 year period in order to remain and/or become more competitive. *See* Tr. Vol. 8 at 2850. From this, he concluded that Ameritech Wisconsin should be forced to reduce its joint and common costs by a similar 24% in order to remain and/or become more competitive, even before any specific "adjustments" are made. *See id.* at 2851.

  Ameritech Wisconsin takes serious issue with Mr. Behounek's reasoning.[10] Nevertheless, if one accepts his threshold premise – *i.e.*, that AT&T and Ameritech Wisconsin are comparable for purposes of joint and common costs – then Ameritech Wisconsin's 32.11% markup understates significantly what a "reasonable measure" would be. Using complete USOA data filed by in 1995, on the eve of being accorded non-dominant status by the FCC, AT&T's joint and common cost loading was 54.60% – more than 66% greater than that proposed here by Ameritech Wisconsin for itself.

(a) Should Ameritech Wisconsin's (Ameritech) model be used with or without revisions or should some other method be used?

[10] For example, AT&T's SG&A expense to revenue ratio declined by 24% due to a dramatic increase in revenues ($10.8 billion) rather than a significant decrease in SG&A expenses ($0.855 billion). Appendix of Exhibits to Ameritech Wisconsin Initial Brief ("Initial Appendix"), Tab C. That level of decrease is approximately matched by Ameritech Wisconsin's model, which assumes a 3% reduction per year from the Commission's price cap proceedings for Network Support, General Support, and Corporate Overhead. *See* Tr. Vol. 2 at 853.

For the reasons discussed in Ameritech Wisconsin's Initial Brief at pages 17-23, Ameritech Wisconsin's model should be used, without any revisions.

(b) If Ameritech's model is used:

1. Should product management costs for wholesale products be shared among all products or borne solely by wholesale products? (This includes the relationship between wholesale and retail markups.)

a. Should all product management costs for wholesale services be included in the shared and common mark-up or should some be eliminated?

The CLECs in their opening brief merely rehash what Mr. Behounek said in his prefiled testimony. Ameritech Wisconsin responded to and refuted his contentions in its Initial Brief (AW Br. at 23-26), and will not repeat that discussion here – reserving however the right to respond to any new arguments raised by the CLECs in their Reply Brief.

2. Should any other adjustments be made to Ameritech's model, including any of the following?

Ameritech Wisconsin's model should be adopted, without adjustments, for all the reasons discussed in Ameritech Wisconsin's Initial Brief at pp. 26-35

a. Base calculations on a combination of regulated and nonregulated costs?

Ameritech Wisconsin respectfully refers the Commission to the pertinent discussion in its Initial Brief (AW Br. at 27-28). The CLECs' pitch boils down to this: they want the Commission, with a single stroke of the pen, to eliminate tens of millions of dollars of real, actually incurred common costs because of their asserted belief that there *might* be some incidental direct cost buried in those costs. They provide no support whatever for this assertion – indeed, they haven't identified a single penny of improperly included direct cost. This unsupported argument should be seen for what it is – an improper effort to shrink, very substantially, the markup's numerator – and rejected.

b. Adjust for network growth?

Ameritech Wisconsin respectfully refers the Commission to the pertinent discussion in its Initial Brief (AW Br. at 28-30). Here the CLECs attempt their disingenuous sleight of hand: They claim that TELRIC costs are higher than Ameritech believes (thereby inflating the markup's denominator) when it comes to determining the joint/common cost markup; but these same costs are much, much lower when it comes to determining the TELRIC portion of Ameritech's UNE rates. The CLECs' effort to have it both ways must be rejected.

c. Reflect increased efficiency based on AT&T percentages?

Ameritech Wisconsin respectfully refers the Commission to the pertinent discussion in its Initial Brief (AW Br. at 30-32).

d. Consider part of plant operations administrations and engineering as double counted and remove those costs considered to be double counted?

Ameritech Wisconsin respectfully refers the Commission to the pertinent portions of its Initial Brief (AW Br. at 32-33).

There is no double counting. The CLECs' Brief itself highlights the lack of a double count. As the CLECs' Brief details, Ameritech Wisconsin allocates the net balances (after clearances) of Plant Operations Administration (USOA 6534) and Engineering (USOA 6535) to its shared and common costs. *See* CLEC Br. at I.B.-14. Also, as detailed in the CLECs' Brief, the amounts which are cleared are placed into other accounts, where they may, if appropriate, be included in TELRIC costs studies. *See id.* at 14-15. However, nothing is inappropriate about this in any way. This treatment is entirely consistent with modern accounting practice (the "matching principle") as well as the FCC's edict that "[c]osts must be attributed on a cost-

causative basis." *First Report and Order*, ¶ 691. By definition, the amounts cleared from accounts 6534 and 6535 are excluded from the joint and common cost model.[11]

There is no need for the CLECs' proposed solution – because there is no double count. All necessary reductions to this account occur through the clearance process itself. Since Network Administration (USOA 6532) is not a clearance account, Ameritech Wisconsin has to make specific adjustments to remove costs appropriate for TELRIC cost studies.[12] Such costs, as identified by the CLECs' Brief, are already removed from the clearance accounts and placed into more specific accounts (which, if appropriate, are included in TELRIC cost studies).

In sum, the only double counting that is occurring here is the double counting that would result if the CLECs' proposal were implemented. In that case, the same expense would be eliminated twice, improperly deflating the markup's numerator.

e. Eliminate legal and external relation costs?

Ameritech Wisconsin respectfully refers the Commission to the pertinent portion of its Initial Brief (AW Br. at 33-35).

The 1996 Act forces Ameritech Wisconsin to incur substantial legal expenses in implementing its requirements. Ameritech Wisconsin seeks to recover its legitimate legal expenses from all its customers on a strictly pro rata basis, including its UNE customers. The Illinois Commerce Commission recognized substantial legal expenses arise from "(1) additional negotiations with requesting carriers; (2) additional arbitrations with requesting carriers; (3) renegotiation of existing interconnection agreements; (4) complaint cases regarding Ameritech

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[11] The amount originally booked into a clearance account either (1) is cleared into another, more specific account (and possibly included in the appropriate TELRIC study) or (2) remains in the clearance account at the end of the fiscal year (and included in the joint and common model).

[12] In fact, Ameritech Wisconsin has provided the CLECs with significant documentation detailing the specific adjustments made to this account. *See* Tr. Vol. 2 at 858.

Illinois' performance under such agreements; and (5) cost dockets such as this one regarding unbundled network elements." Tr. Vol. 2 at 864 (quoting from the Illinois commission's *TELRIC Order* at p. 52). Nothing in the CLECs' Brief takes serious issue with the reasoning of the Illinois commission – that Ameritech Wisconsin incurs these costs.

Instead, the CLECs attempt to impugn Ameritech Wisconsin's motives in this proceeding and others.[13] The Commission here addresses highly complex technical and legal questions under the 1996 Act. The validity of the pricing regime at the center of this cost docket shall soon be heard by the Supreme Court. *See Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *cert. granted* 121 S. Ct. 877 (Jan. 21, 2001) (No. 00-511). Numerous technical issues pervade this docket, as highlighted by the Issues List developed by Staff, requiring the development of a detailed record and the submission of lengthy briefs by both parties.[14] Ameritech Wisconsin has worked diligently and in good faith to address these and other complicated questions in each and every proceeding before the Commission. Accusing Ameritech Wisconsin of "overkill" inappropriately denigrates the complicated questions addressed by this Commission.

All Ameritech Wisconsin seeks to do is pass on its legitimate legal expenses to all of its customers on a strictly pro rata basis. *See* Tr. Vol. 2 at 864. Ameritech Wisconsin's customers include both retail and UNE/interconnection customers. If Ameritech Wisconsin cannot recover the pro rata share of its legitimate legal expenses from its UNE customers (CLECs), in effect,

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[13] *See* CLEC Br. at I.B.-20 ("Ameritech has every incentive to out-spend its competition in what often amount to 'scorched-earth' proceedings;" "Ameritech likely outspent the CLECs 4:1;" "Such 'overkill' is in all likelihood the result of Ameritech's intention to recoup its expenses on the backs of the CLECs through inflated UNE rates."

[14] Without indulging the hyperbole from the CLECs' Brief, Ameritech Wisconsin respectfully submits that both parties, recognizing the issues at stake, have devoted significant legal and support staff time to this proceeding. Ameritech Wisconsin will not speculate on the number of support staff and attorneys present for the CLEC Coalition – a review of the transcript should provide the appropriate information, should the Commission decide that it somehow is relevant.

Ameritech Wisconsin's retail customers will be forced to bear a disproportionate share of the expenses (all legal expenses). This is entirely inconsistent with the Act. Accordingly, the Commission should reject the CLEC's baseless speculation and their proposed adjustment.

3. Over what base should the following categories of costs be allocated?

The CLECs have not specifically addressed these questions. Ameritech Wisconsin rests on its previous response, reserving the right to respond to any ill-timed answer in the CLECs' Reply Brief.

a. Network Operations

See supra.

b. General Operations

See supra.

c. Corporate Operations

See supra.

4. How should Joint and Common costs be assigned to the different elements?

The CLECs do not offer their own answer to this question, merely quoting paragraph 696 from the FCC's *First Report and Order (see* CLEC Br. at I.B.-3) and concluding that this Order "requires that shared and common costs be attributed to the group of elements causing the costs to be incurred." *Id.* However, as the CLECs themselves note, the Order recognizes that "[o]ne reasonable allocation method would be to allocate common costs using a fixed allocator, such as a percentage markup over the directly attributable forward-looking costs." *First Report and Order*, ¶ 696.

Ameritech Wisconsin, consistent with these FCC rules, has allocated shared and common costs in such a manner. Also, this method is consistent with the top-down methodology

presented by Staff and adopted by this Commission in Docket No. 6720-TI-120. *See* Tr. Vol. 2 at 828. No detailed alternative has been presented to the Commission. Accordingly, Ameritech Wisconsin's proposed allocator should be adopted by the Commission.

C. Loop Related Issues

(1) What factors should the Commission consider when determining whether or not the loop rates and subloop rates proposed by Ameritech are reasonable?

As Ameritech Wisconsin explained in its opening brief, the pricing provisions in section 252(d) of the Act, along with the FCC's regulations and orders interpreting those provisions, establish the criteria for evaluating the "reasonableness" of Ameritech Wisconsin's UNE rates. That is, Congress and the agency charged with responsibility for implementing the Act have already decided what is "reasonable" with respect to UNE rates. The hallmark of these criteria is section 252(d)'s requirement that those rates be based on cost. Not only is the Commission required to follow and apply these criteria in this proceeding (*AT&T v. Iowa Utilities Board*, 525 U.S. 366 at 378 n. 6 (1999)), as we demonstrated above, it is also wise public policy that it do so. To quote Staff's Duane Wilson: "[T]he most important consideration in this docket is to end up with prices in line with costs." Tr. Vol. 12 at 4420. Mr. Wilson got it exactly right. That is what the law requires. Equally important, it is what the public interest requires.

The CLECs advocate something altogether different. They urge the Commission to focus not on Ameritech Wisconsin's costs, but instead on the "real world effects" of setting UNE prices. CLEC Br. at I.C.-7-11. This appeal to "real world effects" should be recognized exactly for what it is: a plea that the Commission ignore Ameritech Wisconsin's costs in favor of an "outcome-based" approach to UNE pricing. And the CLECs' desired outcome is not the promotion of the kind of genuine competition contemplated by the Act, but rather UNE prices that are as low as the CLECs can persuade the Commission to take them. The CLECs' proposal

is nothing more than a thinly-veiled threat that if they do not get the low UNE prices they want – below-cost prices that leave Ameritech Wisconsin subsidizing CLEC entry and holding the bag of substantial unrecovered costs – they will "take [their] ball and go home" (CLEC Br. at I.C. 8), and exit the competitive marketplace in Wisconsin.

The CLECs implore the Commission to ignore Ameritech Wisconsin's costs by "go[ing] beyond [the] mathematical application of cost models." CLEC Br. at I.C.-1. If this be the case, one naturally wonders why the parties spent the past year studying and attempting to determine Ameritech Wisconsin's costs. The CLECs apparently would have the Commission toss out the window the numerous cost studies and voluminous supporting testimony filed in this proceeding by Ameritech Wisconsin (as well as their own witnesses) over the past year. What the CLECs seek would be unlawful and, as we showed above and discuss further below, bad public policy.

As we demonstrated in Ameritech Wisconsin's Initial Brief (AW Br. at 4-5), the TELRIC methodology does not allow Ameritech Wisconsin (or any facilities-based provider) to recover its true costs – because it ignores legitimate, efficiently-incurred historical costs and demands a degree of efficiency no real world firm could ever match. The CLECs seek to drive down Ameritech Wisconsin's rates *even further*, leaving Ameritech Wisconsin with even more unrecovered costs. As Dr. Debra Aron explained, "UNE prices should not be as low as someone deems 'possible'; instead, the rate-setting process for UNEs should be a serious and sober consideration of appropriate costs." Tr. Vol. 6 at 1872. And even if UNE prices could be based on something other than costs (which they cannot), the CLECs offer no other baseline to which UNE costs can be tethered. The CLECs' proposal offers no limiting principle whatsoever. Perhaps what they envision is akin to the famous line in the infamous Supreme Court

pornography case: They can't define it, but when it's low enough, "you'll know it when you see it!"

* * *

The CLECs repeatedly attest that if their proposal is not adopted, there will be no competition in Wisconsin. But what kind of competition is it that the CLECs want? In the CLECs' world, the Wisconsin market is "competitive" not if it serves the public interest, but only if it guarantees the success of each and every CLEC, regardless of the health of its business plan or the efficiency of its operations. This is inefficient competition. Section 252(d) requires that UNE rates be based on cost; it does not allow State commissions to set UNE rates in order to accommodate inefficient market entry. Moreover, the CLECs' brand of "competition" is not the kind of competition envisioned by the Act.

There is more to competition that simply lowering prices. As Dr. Debra Aron explained, the genuine competition contemplated by the Act (which this Commission should encourage) may (but does not always) result in lower retail prices. However, genuine competition does benefit consumers by yielding (1) more efficient investment in new technologies; (2) more efficient investment in existing and new infrastructure; and (3) improved products and services to better meet customer desires. Tr. Vol. 6 at 1873, 1877. If UNE rates are set well below cost, CLECs will have no incentive to build their own facilities and provide services at cost when they can provide those services at rates that fail to recover their true cost by leasing Ameritech Wisconsin's UNEs. *Id.* Inefficient, below-cost UNE rates will give CLECs purchasing UNEs an unfair advantage in competing with Ameritech Wisconsin because the CLECs can offer lower prices for their services. Tr. Vol. 6 at 1872. Moreover, all parties – ILECs and CLECs alike – will have less incentive to invest in existing and new infrastructure and in new technology. Tr.

Vol. 6 at 1870, 1876-77. They will not make these investments if they cannot recover the costs of their network and must compete against other entrants who can exploit inefficient, below-cost UNE prices. Tr. Vol. 6 at 1877-78. This fundamental distortion in the "make-versus-buy" decision will harm any attempt to encourage genuine facilities-based competition. Tr. Vol. 6 at 1878. As a result, consumers will lose. There will be less investment in maintaining existing facilities and building new, innovative facilities. As Justice Breyer recognized,

> Increased sharing by itself does not automatically mean increased competition. It is in the unshared, not in the shared, portions of the enterprise that meaningful competition would likely emerge. . . . Nor can one guarantee that firms will undertake the investment necessary to produce complex technological innovations knowing that any competitive advantage deriving from these innovations will be dissipated by the sharing requirement. . . . [A] sharing requirement may diminish the original owner's incentive to keep up or to improve the property by depriving the owner of the fruits of value-creating investment, research, or labor.

AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366, 428-29 (Breyer, J., concurring in part and dissenting in part).

Thus, setting UNE prices below cost fosters inefficient competition and entails significant social costs that will, in the long run, disserve the public interest. The Commission should also be cognizant of the fact that, while setting UNE prices too high also entails social costs, those costs are not the same as those that would be incurred if the rates were set too low; they would be considerably less. Tr. Vol. 6 at 1929-31. If UNE rates are set "too high," it is true that a CLEC that plans to provide service exclusively (or primarily) through UNEs may find it difficult to implement its business case. Tr. Vol. 6 at 1870. As Dr. Aron explained, the social cost associated with eliminating this business plan would not be nearly as great as the social costs that result from chilling investment in new infrastructure, technology and services. *Id.*

* * *

Finally, the CLECs argue Ameritech Wisconsin's rates do not pass the "red-face" test. CLEC Br. at I.C.-12. The gist of this accusation is that Ameritech Wisconsin's unbundled loop rates are facially unreasonable because they are "so much higher" than rates approved in other Ameritech states and in the 1997 SGAT case (Docket No. 6720-TI-120).

We acknowledge that Ameritech Wisconsin's proposed UNE loop rates in this proceeding are higher than those approved in the 1997 SGAT case, upon which the current Wisconsin rates are based. We also acknowledge that our proposed loop rates are higher than those approved in other Ameritech states. But the inference that the CLECs seek to draw from those undisputed facts – that there is something wrong with the current proposal – is invalid. The existing rates here and in the other states are based on cost models and input assumptions that are flawed and that systematically and substantially understate Ameritech Wisconsin's true costs. Tr. Conf. Vol. 3 at 496-503. There is indeed something wrong – but it is with the old studies and old results, not the new ones.

There are two changes that essentially explain the difference – changes that bring Ameritech Wisconsin's costs and rates into compliance with TELRIC principles and the FCC's regulations. The first, explained at length in our Initial Brief, discussed above in the Introduction and discussed further below, is that rather than using unrealistically high fills (particularly for copper distribution plant) that bear no relationship whatsoever to the "actual total usage" (*First Report and Order*, ¶ 682) reasonably expected in the forward-looking network, Ameritech Wisconsin now uses fills carefully calibrated to comply with the mandate of federal law. See Tr. Conf. Vol. 3 at 496.

The second is that Ameritech Wisconsin has corrected numerous deficiencies in its Loop Facility Analysis Model ("LFAM"). The revised LFAM yields much more accurate loop costs.

First, the revised LFAM uses a new distribution methodology. The old LFAM relied only on 3,400 samples to develop distribution and drop investments, and was inadequate for further cost deaveraging initiatives. Tr. Conf. Vol. 3 at 497. In contrast, the new LFAM uses 1,670,000 addresses in almost 4,900 distribution areas. Second, and more importantly, the new LFAM model captures the costs of required components (such as building interior terminals, service area interfaces, and drops) that were not listed on samples under the old version. Third, the new LFAM accounts for investments in huts, cabinets, and entrance facilities, investments that the old version of LFAM did not always include. Fourth, the new LFAM uses updated installation factors – factors based on 1999 ACAR data (the old version used 1995 ACAR data). Finally, the new LFAM model assumes a forward-looking mix of 22, 24, and 26-gauge cable. The previous model assumed only the less expensive 26-gauge cable.

The revisions to LFAM not only increased certain costs, *it also produced lower costs* for some investments. For instance, the current version of LFAM reflects fiber cable investments that are approximately **[Begin Conf *** ****** End Conf]** lower than under the previous version. The current version also includes more of the less-expensive fiber circuits because the economic breakpoint at which it is less expensive to deploy fiber facilities instead of copper facilities has been reduced from 12,000 feet to 6,000 feet. Finally, the current version of LFAM reflects a greater variety of Digital Loop Carrier ("DLC") equipment sizes, which results in less unused capacity and less expensive DLC components. The combined impact of the DLC related changes yield a savings of up to **[Begin Conf *** ******* End Conf]** for feeder plant.

Moreover, while castigating Ameritech Wisconsin for high loop costs (and rates), the CLECs carefully avoid any mention of the fact that Ameritech Wisconsin's overall effort to better implement and comply with TELRIC has resulted in very substantial *cost reductions* in the

other major components of its network, switching and transport. For example, the basic line port cost has decreased **[Begin Conf********** End Conf]**. Tr. Conf. Vol. 3 at 646. And the usage costs associated with that port have fallen dramatically, **[Begin Conf *** ********** End Conf]**. *Id.*

(2) How should loop cost and subloop cost inputs be calculated?

(a) What fill factors should be used for the following portions of the loop?

Of all the unbundled loop cost study inputs, fill factors have the greatest impact on the final loop rates. Ameritech Wisconsin demonstrated extensively in its opening brief (AW Br. at 41-54) why the fill factors it proposes for the relevant loop components – copper distribution, copper feeder, fiber feeder, and loop electronics – are the only fill factors that meet the requirements of paragraph 682 of the FCC's *First Report and Order*, which mandates the adoption of fills that represent a "reasonable projection of the actual total usage of the element."

The CLECs' inflated "hypothetical" fill factors fall far short of this requirement. They are driven not by what the FCC requires but by the CLECs' own guiding principle: the singular goal of understating costs and driving UNE rates down wherever possible. The CLECs offer *no* support or explanation in their brief of why their fill factors comply with paragraph 682. (Indeed, they do not even cite paragraph 682 in their fill factor discussion.)

The CLECs hinge their critique of Ameritech Wisconsin's fill factors on a fundamental misunderstanding of (or perhaps an unwillingness to acknowledge) what those fill factors represent. The CLECs believe the "fatal flaw" in Ameritech Wisconsin's fill factors "is that they are based upon the company's . . . embedded network . . . rather than on a least-cost, forward-looking network." CLEC Br. at I.D.-21. The CLECs are 100% mistaken. Ameritech Wisconsin's fill factors *are premised on the forward-looking, least cost network required by TELRIC and posited by Ameritech Wisconsin's cost studies.* Ameritech Wisconsin stated in its

opening brief and will state again here: Its proposed fills are *not* the actual current usage of its actual real world network. They are the "actual total usage" of the *components* of the network *as they would be redeployed and reconfigured in the forward-looking network required by the FCC's TELRIC methodology.* AW Br. at 44.

In determining its fills, Ameritech Wisconsin started out by constructing the TELRIC-mandated forward-looking network, employing the least-cost, best currently available technology – not necessarily the technology that currently exists in its network. After it constructed this least-cost, forward-looking network, Ameritech Wisconsin then had to determine a "reasonable projection of the actual total usage of" each of the four loop plant components in that network: copper distribution, copper feeder, fiber feeder, and loop electronics. Even though Ameritech Wisconsin's cost model is premised on a remodeled *network* (the TELRIC-mandated, least-cost, forward-looking network), that reconfigured network will employ technologies that Ameritech Wisconsin uses today in its existing network for each of the four loop plant *components.*

For instance, Ameritech Wisconsin's reconfigured network assumes that fiber feeder will be used instead of copper feeder where it is more efficient to do so, even though its current network may use copper. And Ameritech Wisconsin's current network sometimes employs Subscriber Line Carrier for loop electronics even though Litespan Digital Loop Carrier ("DLC") equipment is the least-cost, best currently available technology for loop electronics. Thus, the reconfigured network assumes the use of Litespan DLC on a 100% basis, even though Ameritech Wisconsin's current network does not contain 100% Litespan DLC. And because the forward-looking Litespan technology has a higher fill rate than some of the other technologies currently used in Ameritech Wisconsin's network, the proposed fill for loop electronics – the actual

current fill for Litespan – is higher than the actual usage rate for loop electronics in Ameritech Wisconsin's current network.

After remodeling its network, Ameritech Wisconsin had to determine what the fill levels would be for each the four loop plant components in that remodeled network. For the reasons discussed in its opening brief, the best, most reasonable projection of future actual total usage is the actual current fill levels of the technologies that are used in those components in its existing network. As Ameritech Wisconsin demonstrated in its opening brief, there is every reason to expect that the current actual fill levels for those technologies will continue to be the fill levels for those technologies in the remodeled network mandated by TELRIC.

This is true for three main reasons, each of which stands unchallenged by the CLECs:

First, each of the four loop plant components in Ameritech Wisconsin's existing network employs (and has done so for a considerable amount of time) the least-cost, best currently available technology. This means that these components are (a) forward-looking, and (b) under TELRIC, are the facilities/elements that must be used to determine the cost of and resulting rates for unbundled loops. The technology of these components is mature, and the technical nature of these components will not change significantly in the future. Tr. Conf. Vol. 3 at 1045; Tr. Vol. 2 at 1058, 1060, 1068.

Second, the actual total usage of each element has been stable over a number of years. Tr. Vol. 2 at 1058, 1060, 1063-65, 1068-69. As Mr. Mullen testified, the fill levels for these components "ha[d] not changed . . . either before or after" the six-year period over which he studied the fill levels. Tr. Vol. 2 at 1069. In fact, these fill levels have remained "virtually constant," "stable," and have "not changed at all" since the early 1980s. Tr. Vol. 2 at 1058-60,

1068. This is usually the case where technology is mature, as it is in Ameritech Wisconsin's network. The CLECs are silent on Mr. Mullen's analysis and appear to concede its accuracy.

Third, the same economic and technological factors that drove placement and spare capacity decisions for distribution and feeder plant in the past will continue to drive such decisions in the foreseeable future. Just as the fill levels have not changed in the past, they will not change in the future because Ameritech Wisconsin will continue to deploy the same types of mature technology that it has the past, and it will do so in the same manner as it has in the past. Tr. Conf. Vol. 3 at 549; Tr. Vol. 2 at 684, 1068. Telephone plant in the future will continue to contain spare capacity for administration, maintenance and growth, and this spare capacity will continue to be deployed in the same proportion as it is now. This is because, as Mr. Palmer and Mr. Mullen explained, the decision of how much spare capacity to lay is driven by a fundamental cost/benefit analysis that does not change. Tr. Vol. 2 at 1068; Tr. Conf. Vol. 3 at 550. For instance, it is **[Begin Conf **********End Conf]** cheaper to lay a 50-pair copper distribution cable initially, even if much of that cable will go unused for a considerable period of time until sufficient customer demand materializes, than it is to lay 25 pairs initially and then another 25 pairs later when demand increases. Tr. Vol. 2 at 1070. This is why a decision to lay *too little* spare for copper distribution cable is punished severely and why substantial spare is laid, and why the copper distribution fill factor is relatively low: **[Begin Conf*********End Conf]**. In contrast, with copper feeder cable, laying *too much* spare is punished because the cost of the cable is so much more expensive than the cost of deploying it; it is too costly to lay spare cable that will not be used for some time, and it is relatively cheap to deploy that cable as demand develops. Tr. Conf. Vol. 3 at 1048. This is why the fill factor for copper feeder is much

higher: **[Begin Conf*********End Conf]**. In both cases, the economic considerations driving the placement decisions for each type of loop plant will continue in the future.

The CLECs' assert "fill factors to be used in cost studies should be a constant." CLEC Br. at I.C.-17-18. Ameritech Wisconsin agrees. Ameritech Wisconsin's actual fill factors *are* the fill levels that have been constant in Ameritech Wisconsin's network over time for the relevant loop components. In contrast, the CLECs' hypothetical fills have no link whatsoever to expected actual usage of the components of the forward-looking network. They therefore bear absolutely no relation to, and are totally unhinged from, paragraph 682's mandate that fill factors be a "reasonable projection of the actual total usage of the element."

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The CLECs argue Ameritech Wisconsin's fills include "excessive" amounts of spare, and that those fills require them to pay for this spare while Ameritech Wisconsin gets to that spare to serve its own customers. CLEC Br. at I.D.-22. This claim is ludicrous. The spare facilities captured in the forward-looking actual fill factors are not used *by anyone* – not by the CLECs, and not by Ameritech Wisconsin. This is what "spare" means. What the CLECs really want is for Ameritech Wisconsin to lay just enough spare to serve demand from current customers. But this is an unrealistic short-run view. As discussed above, it is simply too costly for Ameritech Wisconsin to lay a new line every time one is ordered by a customer. Therefore, to keep loop deployment costs down, Ameritech Wisconsin must continually build sufficient spare capacity into its facilities in advance of future demand in order to meet that demand in the most cost-effective, efficient manner.

Because all demand contributes to the exhaust of network capacity, and the need to replenish spare capacity, it is only logical that a reasonable amount of spare capacity costs be

recovered from current customers. It is also reasonable to recover spare capacity costs from the current customer base at any point in time because, as Mr. Mullen explained, the average amount of spare capacity in the network remains fairly constant over the long run. In the CLECs' world (as advocated by Dr. Ankum), current customers get a "free ride" with respect to spare capacity because they never have to pay for it. But this only means that Ameritech Wisconsin will never recover those costs because, according to Dr. Ankum, current customers should never have to pay for capacity that will be used by future customers – but those future customers will also never pay, because when they materialize, they will become current customers, and therefore not have to pay. This never-ending exercise in sophistry leaves Ameritech Wisconsin forever searching for someone to pay for its spare capacity and the CLECs forever getting below-cost loop rates.[15]

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The CLECs misrepresent (continuing to do so even after learning of their error) what the Commission actually approved in the 1997 SGAT case. There, the Commission approved a fiber feeder fill of **[Begin Conf*********End Conf]**, not **[Begin Conf*********End Conf]** and a loop electronics fill of **[Begin Conf*********End Conf]** not **[Begin Conf*********End Conf]**. Ex. 129C, Tab B. And despite Mr. Starkey's assertions to the contrary, the CLECs' recommended fill for loop electronics is far above the usable capacity fill currently found in

[15] The CLECs argue Ameritech Wisconsin's proposed fill factors should be rejected because Ameritech Wisconsin proposed in a recent payphone proceeding before the FCC "objective" fill factors higher than the fills advocated here. Those fills are not relevant here. The FCC studies were based on TSLRIC, not TELRIC. TSLRIC studies use objective fill factors, fill factors that do not cover costs of all spare requirements. Because TSLRIC studies only set price floors (as opposed to TELRIC model that identifies the actual price for unbundled services), there is still flexibility to set the price above the price floor and therefore recover all costs. Under TELRIC, there is no such flexibility. Therefore, in a TELRIC study, like this one, all spare capacity must be included in the fill factors, or its costs will not be recovered.

ACAR documents for any of the Ameritech states. Rebuttal Testimony of Kent A. Currie, filed May 30, 2001, at 4.[16]

1. **Distribution**

2. **Feeder – Copper**

3. **Feeder – Fiber**

4. **Loop Electronics**

(b) What maintenance factor should be used for loop and subloop plant?

Ameritech Wisconsin's maintenance factors are reasonable and fully consistent with the costing methodology mandated by the FCC, and should therefore be adopted. Ameritech Wisconsin's maintenance factor methodology is described at pages 54-56 of its opening brief. It should be noted that Ameritech Wisconsin's forward-looking maintenance factors are significantly lower than previous factors because Ameritech Wisconsin's forward-looking investment values for pieces of equipment are lower than current investment values. Tr. Conf. Vol. 3 at 622. Based on Mr. Behounek's analysis, the CLECs' raise a few complaints about Ameritech Wisconsin's methodology, but none of these withstand scrutiny. Mr. Behounek's analysis can only be described as shoddy at best.

First, the CLECs argue Ameritech Wisconsin's inflation figures are above the general rate of inflation. Putting aside their idle speculation about general rates of inflation, Ameritech Wisconsin's inflation figures are proper because they are based on a labor-specific inflation rate,

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[16] Even though the **[Begin Conf *** *** *** End Conf]** appears in ACAR, Dr. Currie explained that there is no real difference between the **[Begin Conf *** *** **** End Conf]** and **[Begin Conf *** *** *** End Conf]** as far as influencing loop rates. AW Br. at 51 n. 18; Rebuttal Testimony of Kent A. Currie, filed May 30, 2001, at 10-13. And the **[Begin Conf *** *** *** *** End Conf]** for loop electronics reflected in ACAR is simply the *usable capacity* fill, not the actual fill. Rebuttal Testimony of Kent A. Currie, filed May 30, 2001, at 4. Usable capacity fills are not appropriate in this proceeding. *Id.* at 4-5.

since its maintenance expenses are primarily labor-based costs. Tr. Conf. Vol. 3 at 617. Ameritech Wisconsin based these rates on objective economic data taken from the Bureau of Labor Statistics' Employment Cost Index. *Id.* at 618.

Second, the CLECs argue Ameritech Wisconsin's maintenance factors should be decreasing because the ratio of expenses to maintenance costs has been decreasing. The CLECs' speculation that expenses (the numerator in the maintenance factor) are decreasing applies equally to maintenance costs (the denominator in the maintenance factor) – maintenance costs may also be declining due to the efficiency of forward-looking technologies. Tr. Vol. 2 at 873. And where maintenance costs decrease at a greater rate than expenses, then the maintenance factor will increase even though both the numerator and denominator are decreasing. *Id.* As Mr. Palmer explained, Mr. Behounek's recommendations are based on high level data regression that significantly distorts the expense to investment relationships. Tr. Vol. 2 at 872. Also, the booked investment accounts on which Mr. Behounek relies for his expense and maintenance values reflect only the original cost of the investment; he fails to restate these values to a current year basis. *Id.*

Third, the CLECs argue Ameritech Wisconsin should reduce its maintenance factors by the portion of the plant type that is beyond its economic life, believing that the oldest equipment – equipment beyond its economic life – generates the most maintenance expenses. However, economic lives are averages. Economic lives recognize that within any large group of plant items, some pieces of equipment will retire before the end of their economic life, and others will retire after it. Tr. Vol. 2 at 875. Accurate maintenance factors must therefore account for equipment that retires after the end of their economic life, as well as equipment that retires before it.

(c) What prices should be used for loop electronics – specifically what blend of growth versus replacement lines should be used? Should the blend be the same as used in the switching inputs, since these are procured from the same contracts, or are there reasons to use a different blend?

Ameritech Wisconsin explained in its opening brief why the Commission should adopt the material prices for DLC equipment reflected in its unbundled loop study. AW Br. at 56-59. The CLECs assert that those prices are improper because they are higher than the prices reflected in the existing DLC equipment contract between SBC and Alcatel. However, that contract did not apply to Ameritech Wisconsin until late last year. The contract that did apply was *Ameritech's* agreement with Alcatel, and Ameritech Wisconsin used the prices from that contract in the cost study. Thus, when the Commission ordered Ameritech Wisconsin to perform the cost study, it used the best – and only – information it had at the time. Ameritech Wisconsin has already documented the can of worms that is opened by altering cost studies simply because an input may change (AW Br. at 56-57), and it will not repeat that discussion here. Suffice it to say, however, that under the CLECs' notion of continual cost study revision, cost studies would never be deemed final, and UNE rates would never be set.

But even if the Commission decides to entertain and adopt the CLECs' proposal and base the cost study on the SBC/Alcatel contract, the CLECs fall far short of showing how that contract yields lower DLC prices. (Indeed, at least some of its provisions do not even apply to Ameritech Wisconsin. AW Br. at 57-58.) The CLECs have failed to properly analyze the SBC/Alcatel agreement, despite having it for nearly half a year.[17] Mr. Starkey concedes he has not reviewed the "hundreds of pages of detailed cost and technical language" in the contract. Tr.

[17] The CLECs insinuate that Ameritech Wisconsin deliberately stalled in producing the SBC/Alcatel agreement. CLEC Br. at I.C.-31. However, the delay stemmed from the fact that the CLECs requested the contract during the period it was being negotiated and before it was finalized. Tr. Conf. Vol. 3 at 560.

Vol. 8 at 3197; Tr. Conf. Vol. 9 at 3464. Thus, the CLECs can point only to a handful of provisions that purportedly result in lower DLC prices. Moreover, as will be shown, their tortured reading of those provisions does not demonstrate that Ameritech Wisconsin will have lower DLC prices.

The CLECs first argue that the prices for line cards and plug-ins are much lower under the SBC/Alcatel contract. CLEC Br. at I.C.-31. (Those devices are placed in central offices and remote terminals for purposes of deriving an individual voice grade (*i.e.*, DS0) channel).) But it should really not be surprising that, given his failure to properly review the contract, Mr. Starkey refers *only* those prices for plug-ins that *decreased* from those in Ameritech's agreement with Alcatel. However, *other prices have increased under the SBC/Alcatel agreement.* Tr. Conf. Vol. 3 at 560. **[Begin Conf** *** ********** ********** **End Conf].** Indeed, Mr. Starkey was eventually forced to concede that "Mr. Palmer's testimony is accurate with respect to the fact that business set plug-in costs do increase in the new contract." Tr. Conf. Vol. 9 at 3464.[18]

As Mr. Palmer explained, DLC equipment contracts address numerous hardware and plug-in items and often entail tradeoffs – new contracts will decrease prices for certain items while increasing prices for others. Tr. Conf. Vol. 3 at 561. And this was especially likely with respect to the SBC/Alcatel agreement because Ameritech's contract with Alcatel did not match the SBC/Alcatel agreement price for price and piece of equipment for piece of equipment. Tr.

[18] The CLECs argue that even though this price increased, it is not relevant because that equipment is not used in the cost study. CLEC Br. at I.C.-35. It does not matter whether that piece of equipment is used in the study. This example only goes to show that prices *have* increased, and therefore, the parties must thoroughly review the contract to see if other prices have increased, prices that *would* be relevant to the cost study.

Conf. Vol. 3 at 561. SBC may have been given bigger discounts on certain items while Ameritech received bigger discounts on other items. Therefore, only a thorough analysis of all the provisions in the SBC/Alcatel agreement will reveal whether (and if so, how much and in which direction) the prices in that agreement affect Ameritech Wisconsin's unbundled loop rates. Ameritech Wisconsin believes they do not materially affect the pertinent rates, and Mr. Starkey admits that he has not performed the analysis necessary to refute that belief. The CLECs' proposed changes should therefore be rejected.

Not content to import purportedly lower list prices from the SBC/Alcatel agreement, the CLECs next argue that those prices should be further decreased because Ameritech Wisconsin will receive a term discount under the contract. CLEC Br. at I.C.-32-33. They argue that section 8.1 of that agreement indicates "that the list prices . . . will fall by no less than **[Begin Conf********End Conf]** for every year pursuant to the terms of the contract." Tr. Conf. Vol. 9 at 3358. There is no such clause in the contract. Rather, section 8.1 states in part that **[Begin Conf**********
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**********End Conf]** (emphasis added). Thus, section 8.1 provides no guarantee that contract prices will be lower in future years, much less that they will be lower by any specific amount. Rather, section 8.1 says only that Alcatel will **[Begin Conf ********** End Conf]**. Thus, Mr. Starkey's claim that "Ameritech *is* experiencing enormous discounts on this equipment every year" (Tr. Vol. 8 at 3190 (emphasis added)) can only be described as strained at best.

The CLECs further argue Ameritech Wisconsin will enjoy purported volume discounts under the SBC/Alcatel agreement. CLEC Br. at I.C.-33-34. But as Ameritech Wisconsin

explained in its opening brief (AW Br. at 58-59), there is absolutely no basis for finding that these provisions will ever be triggered. The provision cited by the CLECs (Exhibit 1-1 to the Agreement) on page I.C.-34 of their brief clearly shows that any discounts depend on how much Litespan DLC equipment SBC/Ameritech buys and when it buys it. SBC/Ameritech may never buy enough equipment to trigger the discounts. Ameritech may find another vendor or technology, or may not enjoy the service demand that the incentive chart requires. And if SBC/Ameritech fails to buy enough Litespan DLC equipment, the base price may actually *increase* by as much as **[Begin Conf********End Conf]**. It is simply impossible to know whether these discounts will apply in the future. Mr. Starkey's claim that Ameritech Wisconsin will meet the other discounts because it "is purchasing Alcatel equipment at an aggressive rate" due to SBC's Project Pronto initiative is pure conjecture. Indeed, depending on how this Commission rules, it is quite possible Ameritech Wisconsin will cease deployment of Project Pronto in Wisconsin, and could therefore severely curtail its purchase of Litespan equipment.

Finally, Mr. Starkey summarily claims the SBC/Alcatel agreement contains many other discounts "that apply to individual pieces of equipment and allowances for upgrading older equipment to the new Alcatel product." Tr. Conf. Vol. 9 at 3360. However, Mr. Starkey does not identify even one of these purported additional discounts, claiming they are "too numerous to mention." Tr. Conf. Vol. 9 at 3360, 3469. He offers only his "assur[ance]" that his recommendations "will not result in prices included in the costs studies below those actually incurred by Ameritech." Tr. Conf. Vol. 9 at 3469. But, as already explained, one cannot conclude that costs under the contract will go down by specific percentages "just based on a quick reading of the discounts contained" in the contract. Tr. Conf. Vol. 3 at 663 (testimony of Mr. Palmer). *All* the terms and conditions must be flowed through the cost models. Tr. Conf.

Vol. 3 at 663. Mr. Starkey has not carefully reviewed the "numerous" provisions of the contract (Tr. Vol. 8 at 3197) and thus the Commission has no realistic choice but to ignore outright Mr. Starkey's "assurances" that these "numerous" miscellaneous discounts exist at all.[19]

Mr. Starkey originally proposed that the DLC list prices used in the cost study be reduced by 13.31% to reflect the alleged contractual discounts. Tr. Conf. Vol. 9 at 3364. One might have thought that Mr. Palmer's explanations of why the contractual discounts cannot, with any certainty, be held to apply would have caused Mr. Starkey to revise – and reduce – his proposed discount factor. However, while Mr. Starkey did revise his proposal, he actually *raised* the discount factor to 16.02%, and this is what the CLECs are now advocating. CLEC Br. at I.C.-37; Tr. Conf. Vol. 9 at 3469. This intransigence should not be countenanced, and the Commission should, for all the reasons discussed above, adopt Ameritech Wisconsin's DLC equipment prices as used in the cost study.

[19] Moreover, these upgrade discount provisions are irrelevant in this proceeding. These provisions deal with equipment Ameritech Wisconsin buys to augment and build upon an existing network that is in service today. Tr. Vol. Conf. Vol. 3 at 563. But since Ameritech Wisconsin's TELRIC cost studies are required to be forward-looking, no costs for upgrading other equipment are included. The studies include costs for the placement of new, forward-looking technologies and equipment, as if the network could be built today in its entirety, rather than augmented a bit at a time as it is in the real world. Therefore, any purported upgrade discounts cannot be applied in this proceeding.

(d) What installation factors should be used?

Ameritech Wisconsin described its installation factors and why they, and the resulting markup, are appropriate at pages 59-62 of its opening brief. The CLECs raise only one argument against Ameritech Wisconsin's installation factors. They argue there is no need to apply in-plant factors at all in the cost study because section 10.14 of the SBC/Alcatel agreement provides that *Alcatel* (and not Ameritech Wisconsin) will do the equipping and installing of its DLC equipment at no additional charge to Ameritech Wisconsin. While Ameritech Wisconsin repeats its objection to use of the SBC/Alcatel contract in the cost study, section 10.14 hardly supports the CLECs' position. That section provides:

> Seller agrees to Install, at the prices set forth herein the products ordered hereunder, including all necessary cabling, connection with Buyer-supplied power, utility and communications services, and in all other respects make the Equipment ready for its intended use.

This provision *does not* relieve Ameritech Wisconsin of all need to do additional work on the Litespan DLC equipment it purchases from Alcatel. It states only that Alcatel will take some steps to make the equipment "ready for its intended use." (Which is not rare, and which is encompassed in the vendor EF&I price). However, the agreement says nothing about an obligation on the part of Alcatel to "turn up" or maintain that equipment. As Mr. Palmer testified, Ameritech Wisconsin will still incur the costs of "turning-up" service on the equipment, costs beyond the vendor's EF&I costs. Tr. Conf. Vol. 3 at 565. And it will still bear the costs that are reflected in its maintenance factors.

(e) What inventory factors should be used?

Ameritech Wisconsin's inventory factors (described at page 62 of its opening brief) stand uncontested. They are reasonable and should be adopted by the Commission.

(f) What fiber/copper cross-over point should be used?

Ameritech Wisconsin's fiber/copper cross over point of 6000 feet (described at page 62 of its opening brief) stands uncontested. It is based on the least-cost, forward-looking network design and should therefore be adopted.

(g) What relative proportions of aerial, underground and buried cable should be used?

The proportions of aerial, underground, and buried cable used by Ameritech Wisconsin it the cost study are reasonable and should be adopted.[20]

(h) How should pole and conduit costs be allocated to Ameritech, CLECs and to third parties?

Ameritech Wisconsin described how pole and conduit costs should be allocated at pages 62-63 of its opening brief. The CLECs do not challenge this allocation, and it should therefore be adopted.

(i) What depreciation lives and salvage values should be used?

As Ameritech Wisconsin explained in its opening brief (AW Br. at 63-64), its depreciation lives are reasonable and forward-looking. They are also the ones adopted by the Commission in Docket 05-DT-102. They should therefore be adopted here as well.

The CLECs argue that because the FCC requires the use of consistent costing technologies for determining universal service support fees and the costs of the UNEs, the Commission should adopt here the FCC's economic lives used in the universal service fund cost studies. However, that leaves the Commission nowhere to go because the Commission, in its 05-TI-160 USF cost order, decided not to adopt a USF cost study.

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[20] The CLECs argue that Ameritech Wisconsin should use only 26-gauge copper cable in its loop plant. So long as the network will include copper distribution (and the CLECs agree that it will – at least throughout the time horizon covered by forward-looking cost studies), 22, 24, and 26-gauge copper will be required.

Ameritech Wisconsin responds in full to the CLECs' concerns on this issue in its discussion under section I.D.(1)(a)(7).

(j) How should loop cost calculations integrate a mix of copper and fiber plant and Digital Loop Carrier (DLC) technology?

Ameritech Wisconsin's unbundled loop cost study assumes that 100% of unbundled loops will be provisioned over UDLC. Quite simply, UDLC is, under TELRIC, the least-cost, most efficient method of providing unbundled loops served by DLC. Ex. 39 at 6. Ameritech Wisconsin explained at length the technical differences between UDLC and IDLC, why, due to the technical characteristics of IDLC, IDLC cannot be cost-effectively unbundled, and why the FCC has repeatedly rejected the notion that IDLC can somehow be cost-effectively unbundled. AW Br. at 64-74. Unlike the combined customer signals that travel on UDLC-fed fiber feeder, which are demultiplexed and separated back into their individual constituent loops before being fed into the switch, fiber feeder served by IDLC is *integrated directly into the switch*; therefore, the individual customer signals are not physically or electronically accessible at the connection to the switch, and thus, they cannot be unbundled. AW Br. at 65-67.

The FCC has repeatedly recognized that IDLC cannot be cost-effectively unbundled. It has explained that "certain lines, such as IDLC, cannot be accessed" in the central office (*UNE Remand Order*, ¶ 206 n.399), that "competitors generally cannot access IDLC loops at the incumbent's central office (*UNE Remand Order*, ¶ 217), and that IDLC systems "mak[e] it difficult, if not impossible, for requesting carriers to access individual loops" at the central office switch. (*Line Sharing Order*, ¶ 69 n.152). Moreover, the FCC (as well as Ms. Flatt, *see* AW Br. at 72-73) has directly refuted the four methods advocated by Mr. Starkey by which IDLC can purportedly be unbundled (*i.e.*, multiple switch hosting, integrated network architecture, digital cross-connect, and side door grooming). In paragraph 217, note 417 of the *UNE Remand Order*,

the FCC concluded that "these methods do not now substantially reduce the competitive LECs' need to pick up IDLC customers' traffic before it is multiplexed." The FCC then went on to reject each the four proposed methods in detail. (*See* AW Br. at 72 for a complete discussion of the FCC's analysis.)

The CLECs ignore the technical limitations inherent in IDLC systems and the FCC's clear findings that IDLC cannot be cost-effectively unbundled. Indeed, they do not even mention, much less attempt to rebut, the FCC's findings, nor do they attempt to support in their brief any of the purported means of unbundling IDLC that they themselves initially proffered through the testimony of Mr. Starkey. (And despite the fact that Staff expressly directed the parties to comment on those methods. *See* Staff Issues List I.C.(5)(c)). Ameritech Wisconsin's extensive testimony and the FCC's extensive findings regarding the inability to provision unbundled loops with IDLC stand unrebutted and should therefore be accepted as fact by the Commission.

Instead, the CLECs have adopted a new strategy: turn a blind eye to the foregoing and resolutely and repeatedly assert that unbundled loops should be provisioned over IDLC, even though IDLC cannot be cost-effectively unbundled. They continue to demand that Ameritech Wisconsin's unbundled loop cost study *assume* the use of IDLC (even though, in reality, IDLC cannot be used to actually provision the unbundled loop). The few arguments they make in support of this exercise in fantasy can be disposed of quickly.

First, the CLECs argue that IDLC is the most efficient forward-looking technology. CLEC Br. at I.C.-43. Referring only to an SBC Project Pronto press release, the CLECs argue that SBC plans to deploy increasing numbers of IDLC units – up to 25,000 units – and that this therefore means IDLC is the most efficient technology. This sloppy (and butchered) invocation

of the press release is farcical. The October 18, 1999 press release to which they refer states only that by the end of the Project Pronto initiative, SBC *hoped* to install or upgrade "25,000 neighborhood broadband gateways." Tr. Vol. 4 at 1128. By no means will all of these 25,000 neighborhood gateways consist of IDLC. As Ms. Flatt explained, the 25,000 neighborhood gateways will contain both DSL-capable equipment and voice-capable equipment. Tr. Vol. 4 at 1129. The DSL-capable portion of these gateways cannot possibly be configured as IDLC because it carries only DSL traffic and therefore never connects to a voice switch. *Id.* Moreover, some of the voice-capable NGDLC units deployed as part of Project Pronto will *not be IDLC units*, but will instead be configured as UDLC units. Tr. Vol. 4 at 1117. Thus, Ameritech Wisconsin is hardly abandoning the use of UDLC, nor does it view IDLC as the Alpha and the Omega of digital loop carrier technologies. While IDLC may be the most efficient forward-looking technology for providing *voice service* to *Ameritech Wisconsin's retail* customers, *it is not*, for all the reasons discussed above and in Ameritech Wisconsin's opening brief, *the most efficient forward-looking technology for providing unbundled loops*, which after all, is what this docket is concerned with. UDLC cannot be considered "inferior" to UDLC in the world of unbundling and competitive access because IDLC cannot support unbundled loops.

Second (and really just a twist on the first argument), the CLECs argue IDLC should be assumed in Ameritech Wisconsin's unbundled loop study because Ameritech Wisconsin uses IDLC on a forward-looking basis to serve its own retail customers. However, Ameritech Wisconsin does this because *it does not have to unbundle loops to serve its own customers.* Moreover, only about 20% of Ameritech Wisconsin's customers are served by DLC loops. Tr. Vol. 4 at 1120. And of these, less than 1/3 are served by IDLC; the remaining 2/3 are served by UDLC. *Id.* Thus, only about 6% of Ameritech Wisconsin's customers are served on IDLC. *Id.*

Finally, taking their last stab, the CLECs resort to scare tactics. Since they recognize that they lose on the technical front, they maintain that IDLC should be assumed in the cost study nonetheless because, otherwise, a "competitive gap" will arise between Ameritech Wisconsin and the CLECs because Ameritech Wisconsin will benefit from being able to offer a less-expensive loop to end uses (because that loop will be served over IDLC) while the CLECs will be saddled with more expensive loops.[21] This is really just another attempt to obtain below-cost UNEs. UDLC is the least-cost technology for unbundled loop; therefore TELRIC requires that CLECs pay the cost of that technology.

The CLECs also argue that whenever they order an unbundled loop served by IDLC, Ameritech Wisconsin must remove the loop from the IDLC and place it on UDLC or a spare copper facility (where available), and that the special construction charges are too high. CLEC Br. at I.C.-52. This is not true. As we explain (*see* section I.C.(7)), when UDLC or a spare copper facility is available, Ameritech Wisconsin will place the loop on such facility for no charge; special construction charges would apply only where no such facility is available – a circumstance that arises less than one percent of the time. Moreover, if the CLECs choose to serve a customer over the UNE-P, Ameritech Wisconsin will leave the customer on the IDLC. (Ameritech Wisconsin can do this because, with the UNE-P, the CLEC buys the switching service as well as the loop; thus, the loop served over the IDLC does not need to be unbundled prior to reaching the switch, but can simply be fed directly into the switch.) Tr. Vol. 4 at 1129.

[21] The CLECs argue (CLEC Br. at I.C.-47) that IDLC results in a cheaper loop because central office terminal (COT) line cards are not needed for IDLC loops, and therefore, the costs of those cards are not incurred for IDLC loops. They are wrong. As Ms. Flatt explained, both IDLC and UDLC loop configurations entail the use of COT line cards. Tr. Vol. 4 at 1117-19.

The CLECs' arguments regarding special construction charges do not contribute to a competitive gap, are unfounded and are addressed in section I.C.(7).[22]

* * *

If the Commission were to adopt the CLECs' proposal to assume the use of IDLC in the unbundled loop cost study, it would run directly afoul of section 252(d) of the Act, which requires that UNE rates be based on cost. The proposal would penalize Ameritech Wisconsin and preclude it from recovering its true costs. Under the proposal, Ameritech Wisconsin would have to provide the unbundled loop using the slightly more expensive UDLC (because only UDLC can be used to provide unbundled loops), but it would be allowed only to charge CLECs a rate based on the slightly less expensive IDLC. The Commission has no authority to violate section 252(d)'s mandate, and it must therefore reject the CLECs' proposal. *AT&T v. Iowa Utilities Board*, 525 U.S. 366 at 378 n. 6 (1999).[23]

1. What proportion of DLC should be used in the cost calculations?

Ameritech Wisconsin's copper/fiber feeder weightings are discussed on page 69 of its opening brief and do not appear to be contested by the CLECs. They should therefore be adopted by the Commission.

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[22] The CLECs suggest that Ameritech Wisconsin will enjoy further cost savings as a result of the technology deployed as part of Project Pronto. CLEC Br. at I.C.-47. However, the only specific savings they refer to are reduced trunking costs. *Id.*, n.5. To the extent trunking costs are reduced as a result of Project Pronto, those reductions will not affected unbundled loop costs, and will therefore not give Ameritech Wisconsin any competitive advantage as far as loop prices are concerned.

[23] To the extent the Hawaii and Michigan Commissions have concluded otherwise, Ameritech Wisconsin respectfully disagrees with those decisions. Those decisions ignore the technical facts and the FCC's pronouncements: IDLC units cannot be unbundled, and State commissions cannot base loop rates on the assumption that IDLC will be used without running afoul of section 252(d)'s mandate that rates be based on cost.

2. What proportion of Universal Digital Loop Carrier (UDLC) versus Integrated Digital Loop Carrier (IDLC) should be used?

For the reasons discussed above, Ameritech Wisconsin's cost study should assume that 100% of unbundled loops are served over UDLC.

* * *

Ameritech Wisconsin's other expenses are appropriate.

The CLECs challenge Ameritech Wisconsin's recovery of $0.05 per month per loop for the following activities: Billing System Reprogramming, the development of Methods & Procedures, and Integrated Testing. CLEC Br. at I.C.-39. The CLECs assert these expenses are not ongoing expenses but rather are one time, start-up expenses that Ameritech Wisconsin has already incurred in meeting its UNE provisioning obligations, and that Ameritech Wisconsin has already recovered via the unbundled loops it has sold to date.

They are wrong on three counts. First, a significant portion ($0.02 of the $0.05) of these costs are not one time, start-up expenses, but instead are ongoing, recurring expenses. Tr. Conf. Vol. 3 at 570. Second, the start-up costs that Ameritech Wisconsin included in its 1996 cost studies have not been recovered, because the demand over which they were spread has not materialized. Even Mr. Starkey agrees that "to the extent that the demand for unbundled loops assumed in the 1996 study has not materialized, . . . some remaining 'other expenses' in this instance may still be appropriate." Tr. Vol. 8 at 3198. Moreover, there have been many new UNE services since 1996 (e.g., UNE-P, ULS-ST, xDSL) that require additional modifications and methods and procedures. Tr. Conf. Vol. 3 at 570. Here again Mr. Starkey agrees that Ameritech Wisconsin should recover these costs. Tr. Vol. 8 at 3200. Finally, and most important, Mr. Starkey is saying that any start-up costs that have already occurred are "sunk" because they have already occurred. In the forward-looking methodology of TELRIC, there are

no sunk costs. The network is constructed new, methods and procedures must be written, and billing systems must be modified. These costs are forward-looking and should be included in a TELRIC study and the resulting UNE rates.

(3) Are there costs associated with or that should be allocated to a HFPL UNE for line sharing?

(a) Are there costs incurred by Ameritech to modify its OSS to implement the unbundling of the HFPL? If so, what is the appropriate price that Ameritech should charge to recover the costs of modifying its OSS to implement the unbundling of the HFPL?

The Commission should adopt Ameritech Wisconsin's proposed price for HFPL-related OSS modifications. As Ameritech Wisconsin explained in its Initial Brief (at pp. 78-80), Ameritech Wisconsin's proposed charge is well-supported, reasonable and represents the costs that Ameritech Wisconsin actually will incur to modify its OSS systems to support CLEC access to the HFPL UNE. The charge was developed based on the vendor costs of implementing the HFPL-related OSS modifications and on a product management demand forecast of the number of shared lines that will be provisioned over the next three years for the entire SBC/Ameritech serving area. Tr. Vol. 1 at 19-20. Ameritech Wisconsin's proposed charge to recover HFPL-related OSS modifications costs also is consistent with the FCC's *Line Sharing Order* (at ¶ 144), which expressly permits incumbent LECs to recover from CLECs the cost of OSS modifications caused by the obligation to provide the HFPL as a UNE.[24] Interestingly enough, the CLECs fail to mention paragraph 144 of the *Line Sharing Order* and the ILECs' legal right to recover from CLECs the cost of OSS modifications necessary for line sharing. This, however, is not surprising given that the CLECs' proposal to pay nothing for HFPL-related OSS modifications

[24] It again should be noted that, because Ameritech Wisconsin has the legal right to recover the cost of HFPL-related OSS modifications from CLECs, the CLECs' proposal that they pay nothing for such modifications would deprive Ameritech Wisconsin of its property in violation of the Takings Clause of the U.S. Constitution.

cannot be reconciled with that paragraph's unequivocal holding that CLECs must pay ILECs for all HFPL-related OSS modifications.

Turning to the specific claims made by the CLECs, they first argue that CLECs should pay nothing for HFPL-related OSS modifications, because Ameritech Wisconsin purportedly had to make the modifications for its affiliate, AADS. This argument misses the point for at least two reasons. *First*, the *Line Sharing Order* permits ILECs to recover these cost regardless of whether they were incurred to enable both affiliated and unaffiliated CLECs to gain access to the HFPL. *Second*, these costs were not incurred solely for Ameritech Wisconsin's affiliate, but were incurred to enable all CLECs to submit HFPL service orders.

The CLECs also attack the vendor quote provided by Ameritech Wisconsin in support of its proposed HFPL-related OSS modification charge. Specifically, the CLECs claim that Ameritech Wisconsin should have obtained a quote based on SBC's entire 13-state region, rather than Ameritech's five state region, because SBC purportedly would have more "buying power" than Ameritech Wisconsin. CLEC Br. at I.C.-57, 58. The CLECs' argument is a waste of time because, as the record establishes, the vendor cost provided by Ameritech Wisconsin *was* based on SBC's entire 13-state region. Tr. Vol. 1 at 19. Although the CLEC suggest this isn't true, they have provided no evidence to support that claim.

In further support of their zero price for HFPL-related OSS modifications, the CLECs cite paragraph 127 of the *Line Sharing Order,* which states, in part, that ILECs' can perform the HFPL-related OSS modifications "at modest expense." CLEC Br. at I.C.-57, 58. This phrase hardly support the CLECs' theory that they should pay nothing for HFPL-related OSS modifications. Moreover, the word "modest" is much too subjective to support the CLECs' theory that Ameritech Wisconsin's proposed charge is overstated, particularly given that the

CLECs' have provided no credible evidence to refute the costs submitted by Ameritech Wisconsin. In any event, even assuming that Ameritech Wisconsin's HFPL-related OSS modification costs need to be adjusted in any way (which is not the case), the solution is not to require Ameritech Wisconsin to absorb the entire cost of such OSS modifications, as the CLECs suggests. Indeed, doing so would be contrary to the FCC's determination that Ameritech Wisconsin and other ILECs are entitled to recover their line sharing-related OSS costs from CLECs. *Line Sharing Order,* ¶ 144.

In yet another baseless attempt to support their proposed zero price for HFPL-related OSS modifications, the CLECs argue that "Ameritech books certain software and computer related expenses to the 'General Purpose Computer' account" and, therefore, any HFPL-related OSS modification costs "will find their way into that account" and "be recovered automatically through Ameritech's shared and common cost factors." CLEC Br. at I.C.-59-60. There is absolutely no record support for this assertion. To the contrary, Ameritech Wisconsin's proposed charge for HFPL-related OSS modifications represents costs that are *not* recovered through shared and common cost factors, and can be recovered only through the charge proposed by Ameritech Wisconsin here.

(b) Should there be a separate charge to recover nonrecurring costs applicable to the HFPL UNE?

It is appropriate for the Commission to set separate charges to recover the recurring and nonrecurring costs applicable to the HFPL UNE. As Ameritech Wisconsin explained in its Initial Brief (at 80), the recurring and nonrecurring charges proposed by Ameritech Wisconsin recover distinct costs, as the costs recovered through Ameritech Wisconsin's nonrecurring charges are not captured in Ameritech Wisconsin's recurring charges. The CLECs' Briefs do not address this issue.

(c) What prices should Ameritech Wisconsin charge for the non-recurring and recurring costs applicable to the HFPL UNE?

I. MONTHLY RECURRING CHARGE FOR THE HFPL UNE.

The Commission should adopt Ameritech Wisconsin's proposed HFPL monthly recurring charge of 50% of the Commission-approved monthly recurring unbundled loop price. As Ameritech Wisconsin explained in its Initial Brief (at 80-83), this charge provides a significant discount to CLECs in comparison to the price they would have to pay for an entire copper loop. This discount, in turn, provides a significant incentive for additional data CLECs to enter the local market through use of the HFPL UNE. Moreover, setting the monthly recurring charge at a positive amount will correctly promote, rather than eliminate, the CLECs' incentive to invest in their own facilities. Setting the price at a positive amount also recognizes that the CLECs' "zero price" proposal, in addition to being bad economics, would be patently unfair, and an unconstitutional taking of Ameritech Wisconsin's property. Tr. Vol. 4 at 1442-1444, 1448-1450, 1453-1454, 1457-1460, 1478-1483.

Equally important, Ameritech Wisconsin's proposed monthly HFPL charge is fully consistent with the FCC's TELRIC pricing principles, which recognize that the cost of a loop used to provide both high frequency spectrum services and low frequency spectrum services is a *shared* cost that must be reasonably allocated between the services that cause that cost. Tr. Vol. 4 at 1457-1460. Indeed, because there are two dedicated connections or services (both high frequency spectrum services and low frequency spectrum services), when a CLEC leases the HFPL, those two connections – the voice service and the data service – jointly cause the cost of the loop, and it is therefore reasonable to divide the cost of the loop equally between those two uses. Notably, allocation of 50% of the loop price to the HFPL also is consistent with the

surrogate HFPL price set by the FCC in its Order approving the SBC/Ameritech merger (at ¶¶ 369, 476), when access to the actual HFPL was not yet available.

In contrast, the CLECs' proposal to set the monthly recurring price for the HFPL UNE at zero conflicts with the pricing requirements of sections 252(c) and 252(d)(1) of the 1996 Act, which preclude the consideration of rate-of-return concepts, such as retail revenues, in setting UNE prices. The CLECs' proposed zero price for the HFPL UNE also would be discriminatory in several respects and would distort the competitive marketplace for advanced services in favor of CLECs using the HFPL, contrary to both sound regulatory policy and the express dictates of section 706 of the Act. In addition to its anti-competitive effects, the CLECs' proposed zero price for the HFPL UNE would discourage facilities-based competition by CLECs, as well as continued investment in facilities by Ameritech Wisconsin. Tr. Vol. 4 at 1477-1483.

The CLECs nevertheless assert that the Commission should adopt a zero price for the HFPL UNE, because the HFPL purportedly creates no incremental cost to Ameritech Wisconsin and would allow Ameritech Wisconsin to "double recover" loop costs.[25] These arguments lack merit. As a preliminary matter, and as fully explained in Ameritech Wisconsin's Initial Brief (at 83-86), under the applicable law, the price for the HFPL UNE cannot be impacted at all by Ameritech Wisconsin's retail rates for voice service. Indeed, section 252(d)(1) states that a commission's determination of UNE prices *shall* be "based on the cost (*determined without reference to a rate-of-return or other rate-based proceeding*) of providing the network element" and "may include a reasonable profit." (Emphasis added). The CLECs, however, expect this

[25] CLEC Br. at I.C.-60. Notably, the CLECs go so far as to claim that it "is undisputed that there is no incremental cost to Ameritech when the HFPL is used to provide DSL service." *Id.* Ameritech Wisconsin, however, has *never* stated that there is no incremental cost to Ameritech Wisconsin when providing the HFPL UNE and, as stated in the text, the record establishes the opposite.

Commission to engage in precisely the kind of "rate of return" analysis that the 1996 Act prohibits in determining appropriate UNE prices.[26] Tellingly, the CLECs avoid addressing section 252(d)(1) of the Act, because their position clearly conflicts with it.

Even if the potential double recovery of such loop costs through retail rates were legally relevant, there is no evidence in the record that Ameritech Wisconsin is in fact recovering the entire cost of the loop through retail rates. In fact, as explained fully in Ameritech Wisconsin's Initial Brief (at 84-86), the record suggests just the opposite. Among other reasons, Ameritech Wisconsin has not been subject to rate-of-return regulation since 1994 (as it has been subject to alternative regulation since that time) and, therefore, has no assurance that it will recover the entire cost of the loop – including all shared and common costs – in retail rates. Tr. Vol. 4 at 1459-1460. Additionally, in Ameritech Wisconsin's last general rate case in September 1990, its retail rates were set to recover the full cost of providing all of its regulated services, assuming that Ameritech Wisconsin would serve all the demand for those services. Tr. Vol. 4 at 1467. These conditions, however, no longer exist in today's market[27] and, as a result, Ameritech Wisconsin's retail products now face competition from CLECs. Tr. Vol. 4 at 1467.[28]

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[26] Significantly, in its Order approving the SBC/Ameritech merger, the FCC necessarily found that any potential for "double recovery" of such costs through retail rates was irrelevant when it established a surrogate HFPL price of 50% of the cost of an entire unbundled loop for unaffiliated CLECs when actual line sharing was not available. *Applications of Ameritech Corp. and SBC Communications, Inc.*, 14 FCC Rcd 14712, ¶ 467; Appendix C (Conditions Appendix), ¶ 14 (rel. Oct. 8, 1999) ("*SBC/Ameritech Merger Order*") (emphasis added).

[27] There are currently more than 100 "active alternate exchange carriers" and more than 200 "active resellers" listed by the Wisconsin Commission. Tr. Vol. 4 at 1459-1460.

[28] The CLECs attempt to support their "double recovery" argument by stating that Pacific Bell assigned a zero cost for the use of loops for the transmission of ADSL when Pacific Bell was providing retail ADSL service. Pacific Bell's costs, however, are not Ameritech Wisconsin's costs, and are wholly irrelevant to this proceeding.

It also is unlikely that Ameritech Wisconsin recovers the entire cost of the loop in retail rates, because much of Ameritech Wisconsin's costs are related to capital investments that must be recovered over a number of years. Consideration of current revenues, therefore, is insufficient to determine whether Ameritech Wisconsin will fully recover all of the costs of unbundled loops. Equally significant, because retail prices were set to recover costs on average, high-usage, lower cost customers subsidize the cost of serving low-usage, higher cost customers. It is precisely these high-margin customers that are first targeted by CLECs and, as such customers are lost by an ILEC, its retail revenues are reduced, and the contribution these high-margin customers provided toward the overall recovery of the costs to provide service to lower-margin customers is lost.[29] Tr. Vol. 4 at 1468. In any event, as explained fully in Ameritech Wisconsin's Initial Brief (at 85-86), competition will preclude Ameritech Wisconsin from over-recovering its loop costs.

The CLECs go on to claim that Ameritech Wisconsin's proposed price of 50% of the Commission-approved monthly recurring unbundled loop price fails to rely on "empirical evidence or sound economic principles," and that "Ameritech simply picked a number it likes." CLEC Br. at I.C.-63. The CLECs are wrong. The proper economic principle for setting the price of the high-frequency spectrum UNE is that this regulated price should replicate a competitive price to the greatest extent possible. A fundamental economic concept underlying the decision to transform local telecommunications into a competitive market is that competition

[29] Significantly, there is no basis to assume that the availability of the HFPL UNE will have a positive effect on Ameritech Wisconsin's revenues. For example, customers who currently maintain a second phone line specifically for dial up Internet access will be able to discontinue that line without affecting their ability to make phone calls while connected to the Internet. The development of voice-over DSL may also have an adverse effect on Ameritech Wisconsin's revenue. In fact, as CLECs become capable of providing several voice circuits over one DSL line, Ameritech Wisconsin's revenues will, in all likelihood, decline. As noted above, recovery of loop assets requires not just current, but sustained, revenue. Tr. Vol. 4 at 1468.

will provide the proper incentives for more efficient investment and innovation. *First Report and Order*, ¶ 679. Efficient competition also requires adequate compensation to the ILEC that owns the UNE. *First Report and Order* ¶ 740. Again, the FCC recognized that this goal is served by prices for UNEs that replicate competitive prices to the greatest extent possible. A price for the HFPL that does not mimic the price that would reasonably prevail in a competitive market (such as a zero price for the HFPL UNE) will have a disruptive impact on competition. Tr. Vol. 4 at 1452-53.

As for the CLECs' claim that Ameritech Wisconsin has provided no "empirical evidence" to support its proposed charge, it is significant that the FCC has recognized that the HFPL UNE does not lend itself to cost estimation using the traditional TELRIC methodology.[30] Indeed, the TELRIC methodology was not designed for allocating shared costs and, in fact, breaks down under the conditions applicable to the HFPL UNE. Other than estimating the underlying cost of the loop and the incremental cost associated with line sharing, the TELRIC methodology does not offer a meaningful basis for the cost-based pricing of the high-frequency spectrum UNE. Tr. Vol. 4 at 1448-49. Despite the difficulty in applying TELRIC, Ameritech Wisconsin has provided more than adequate support for Ameritech Wisconsin's proposal that the monthly recurring price for utilizing the HFPL be 50% of the Commission-approved monthly recurring unbundled loop price (plus the incremental facilities and operations costs caused by sharing the loop).[31] The monthly recurring unbundled loop price has been approved by the Commission and, therefore, has already been proven to be TELRIC-based. Under the FCC's

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[30] FCC 99-355, *Third Report and Order* in CC Docket No. 98-147, released December 9, 1999, ¶¶ 138-39.

[31] Under the TELRIC methodology, prices for interconnection and unbundled network elements must include shared and common costs in addition to the incremental costs. *First Report and Order*, ¶ 682.

TELRIC principles, the cost of a line-shared loop is a *shared* cost that must be allocated between the services that cause that cost. Ameritech Wisconsin's proposed recurring HFPL price of 50% of the loop is fully consistent with the FCC's TELRIC pricing principles, because the cost of the loop is shared by two services. This is the most economically reasonable – and lawful – approach to setting the price for this new unbundled element, for the reasons set forth in Ameritech Wisconsin's Initial Brief (at 78-94).

Notably, the CLECs' assertion (that Ameritech Wisconsin fails to rely on "empirical evidence or sound economic principles" in setting its proposed charge) is ironic, considering that the CLECs' proposed zero price clearly is not based on "empirical evidence" or "sound economic principles." Indeed, in an open market, no rational provider would give a valuable asset away for free. Yet that is exactly what the CLECs propose here. Contrary to the CLECs' claims, it is the CLECs that "simply picked a number" they liked in order to get something of value for nothing. Sound economic principles dictate that CLECs wishing to receive dedicated use of the HFPL should be required to pay for it, just as other advanced services providers are required to pay for the facilities they use to provide service. Any other result would give CLECs utilizing the HFPL UNE an artificial, unfair competitive advantage in the advanced services market. In short, this Commission should not (and legally cannot) require Ameritech Wisconsin to give away this productive assets for free.

In further support of their zero price for the HFPL UNE, the CLECs assert that "a zero price for the HFPL is necessary to avoid economic discrimination." CLEC Br. at I.C.-63. To the contrary, the record establishes that a zero price for the HFPL UNE would be discriminatory *in favor* of data CLECs. As Ameritech Wisconsin explained in its Initial Brief (at 86-89), the monthly recurring charge for Ameritech Wisconsin's HFPL UNE must be set at a positive

amount so as not to distort the marketplace relative to advanced services. DSL is just one of several technologies that are currently competing in the advanced services marketplace. Pricing the HFPL at zero would artificially favor one advanced services technology competitor (DSL providers) over other advanced services technology competitors (such as cable modem, direct broadcast, satellite DBS and fixed wireless providers).[32]

In fact, in other proceedings, advanced service competitors, such as AT&T, have recognized that "a zero price for HFPL is both anti-competitive and unjustified when viewed in light of the entire telecommunications market place." Tr. Vol. 4 at 1482-83. Specifically, a zero price would permit data CLECs to bear no cost for one of the most important assets they utilize in providing their service, while other advanced service providers are required to pay a positive price for the assets they utilize in providing service. As stated above, if DSL providers were able obtain for free the facilities necessary to provide advanced services, they would enjoy a unfair competitive advantage over these other types of advanced services providers. For this reason, the Commission should reject the CLECs' proposed zero monthly HFPL price.[33]

The CLECs nevertheless claim that setting the price of the HFPL UNE at a positive amount would establish "an artificially high, non-cost based price floor that [would] dampen

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[32] As Ameritech Wisconsin explained in its Initial Brief (at 86-89), a zero price for the HFPL UNE also would discriminate against voice CLECs who may want to become providers of the HFPL UNE, against carriers that build their own facilities, against voice service in favor of Internet access, against carriers who support universal service in favor of carriers who do not, against circuit switched technology in favor of DSL technology, and against facilities-based competitors, who pay the full cost of the loop. Tr. Vol. 4 at 1477-83.

[33] As Ameritech Wisconsin explained in its Initial Brief, a zero price for the HFPL also would result in a taking of Ameritech Wisconsin's property without compensation. *See Duquesne Light Co. v. Barasch,* 488 U.S. 299, 310 (1989); *Tenoco Oil Co. v. Department of Consumer Affairs,* 876 F.2d 1013, 1020 (1st Cir. 1989); *Mississippi River Fuel Corp. v. FPC,* 163 F.2d 433, 437 (D.C. Cir. 1947); *MCI Telecommunications Corp. v. GTE Northwest,* Inc., 41 F.Supp.2d 1158, 1170 (D. Or. 1999).

competition in the advanced services market," and force end-users to "pay an unnecessary high price for xDSL services." CLEC Br. at I.C.-64. The CLECs are wrong. To the contrary, permitting CLECs to obtain the facilities they need to provide advanced services for free, while other providers of advanced services pay a positive price for the facilities they use to provide service, would create an artificially *low*, non-cost based price floor for the HFPL UNE and would allow CLECs to undercut the prices charged by providers of advanced service through other technologies. Indeed, what the CLECs truly seek is a commission-sanctioned, artificially low cost for the HFPL UNE that they can pass on to customers in order to obtain an unfair competitive advantage in the advanced service market.

In further support of their proposed zero price, the CLECs cite several State commission decisions that purportedly reject an HFPL UNE price of 50% an entire unbundled loop. As a preliminary matter, the decisions of other State commissions cannot and should not influence the Commission's determination in this case, which must be based on the record before it. Moreover, at least some of the decisions cited by the CLECs are not final or have been appealed. The CLECs also fail to mention that several State commissions have rejected a $0 price for the HFPL UNE. Specifically, the California,[34] Connecticut[35] and Washington[36] Commissions

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[34] *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominate Carrier Networks,* Rulemaking 93-04-0003, *Investigation on the Commission's Own Motion Into Open Access and Network Architecture Development of Dominant Carrier Network,* Investigation 93-04-002, California Public Utilities Commission, 2000 WL 1875844 at *11 (Sept. 21, 2000).

[35] *Application of Southern New England Telephone Company for a Tariff to Introduce Unbundled Network Elements,* Docket No. 00-05-06, Connecticut Department of Public Utility Control, 2001 Conn. PUC LEXIS 141 at *20 (June 13, 2001).

[36] *Costing and Pricing of Unbundled Network Elements, Transport, and Termination,* Docket No. UT-003013, Thirteenth Supplemental Order, Washington Utilities and Transportation Commission, 207 P.U.R.4th 379 at *70 (January 31, 2001).

rejected CLEC attempts to set the price of the HFPL UNE at zero. In fact, the Connecticut Commission specifically found that the ILECs "proposed allocation of 50% of the local loop costs is reasonable for the high frequency portion of the loop," and that "[t]he argument of Rhythms and other parties that the incremental cost of providing the high frequency portion of the loop is zero is not particularly useful."

In a last-ditch effort to support their proposed zero price for the HFPL UNE, the CLECs assert that they "are paying substantial charges for other elements required in line sharing such as OSS modifications, cross connects, splitter access and other tariffed items." Sprint Br. at 50; CLEC Br. at I.C.-64. This assertion is ludicrous, particularly given that the CLECs are proposing to pay nothing, or close to nothing, for each of the elements that they claim they are paying a "substantial charge for." For example, the CLECs are proposing a zero charge for OSS modifications. The CLECs also attempt to avoid paying for necessary cross-connects by urging the Commission to set the price for such facilities as if the splitter is placed on the MDF (an inefficient and costly configuration). And, with respect to the price for "splitter access," the CLECs (without any record support) attack Ameritech Wisconsin's time estimates, installation costs and fill factors in an attempt to substantially diminish Ameritech Wisconsin's proposed price. The CLECs clearly are trying to obtain the HFPL UNE for as close to nothing as possible in order to enjoy an unfair, artificial competitive advantage in the advanced services market. The Commission should prevent such an outcome.

For these reasons, and all the reasons set forth in Ameritech Wisconsin's Initial Brief (at 80-93), the Commission should reject the CLECs' zero price and adopt Ameritech Wisconsin's proposed monthly recurring price for the HFPL UNE.

II. OTHER CHARGES FOR THE HFPL UNE.

A. Recurring Cross Connect Charge.

As Ameritech Wisconsin explained in its Initial Brief (at 80-94), the recurring HFPL cross-connect charge represents the investment required for two tie-cable pairs running between the main distribution frame ("MDF") and an intermediate distributing frame ("IDF"), as well as the terminating block connections that are required to terminate those tie-cable pairs on the frame.[37] Tr. Vol. 1 at 15, 27. Ameritech Wisconsin's proposed charge is reasonable and should be adopted by the Commission. The CLECs' Briefs do not address this issue, except to the limited extent it is addressed in section I.C.(3)(g).

B. Recurring Line-At-A-Time Ameritech Wisconsin-Owned Splitter Charge.

As Ameritech Wisconsin explained in its Initial. Brief (at 95-96), Ameritech Wisconsin's proposed monthly recurring splitter charge (which applies only when the CLEC uses an Ameritech Wisconsin-owned splitter) is reasonable, complies with the FCC's TELRIC rules, and should be adopted. The CLECs' Briefs do not address this issue, except to the limited extent it is addressed in section I.C.(3)(g) below.

C. Nonrecurring Charge For HFPL UNE (Cross-Connect Jumpers)

As Ameritech Wisconsin explained in its Initial Brief (at 96-103), Ameritech Wisconsin's proposed nonrecurring charge for the HFPL UNE (Cross-Connect Jumpers) accurately reflects the central office-based costs Ameritech Wisconsin will incur to provision the HFPL UNE, and

[37] Despite the CLECs' assertion to the contrary, this is not the same rate element as the 2-wire cross-connect for collocation. The 2-wire cross-connect for collocation is based on investment in jumper wire at the MDF and the labor time required to install that jumper. Tr. Vol. 1 at 26-27.

should be adopted by the Commission. The CLECs' Briefs do not address this issue, except to the limited extent it is addressed in section I.C.(3)(g) below.

(d) Should line sharing be required if a portion of the loop uses fiber?

The CLECs incorrectly claim that the FCC's *Line Sharing Reconsideration Order* confirms that Ameritech Wisconsin must provide line sharing over the DSL-related Project Pronto facilities that Ameritech Wisconsin plans to deploy. The CLECs are wrong. As Ameritech Wisconsin explained in its Initial Brief (at 102-05), while the *Line Sharing Reconsideration Order* states that the requirement to provide access to the HFPL, as defined by the FCC, applies to loops that include fiber, it does not impose any particular "fiber-sharing" obligations on incumbent LECs and certainly does not impose any unbundling conditions on the DSL-related Project Pronto facilities that Ameritech Wisconsin plans to deploy. To the contrary, the FCC specifically found that an ILEC's obligation to provide access to the HFPL over fiber loops would depend on what the ILEC *actually deployed* in its existing network and the technical capabilities of that network, *not* on what CLECs would like the ILEC to deploy in its network. The FCC, therefore, declined to impose any particular "fiber-sharing" obligations on ILECs until the technical issues surrounding such "fiber sharing" are resolved. Specifically, the FCC stated:

> We also recognize that there are other ways in which line sharing may be implemented where there is fiber in the loop and we *do not mandate any particular means* in this Order. Solutions largely turn on the *inherent capabilities of equipment that incumbent LECs have deployed, and are planning to deploy*, in remote terminals. . . . For these reasons, we are initiating a *Third Further Notice of Proposed Rulemaking* today in the Advanced Services docket and a *Sixth Further Notice of Proposed Rulemaking* in the Local Competition docket that requests comment on the feasibility of different methods of providing line sharing where an incumbent LEC has deployed fiber in the loop.

Line Sharing Reconsideration Order, ¶ 12.

The CLECs' arguments that the *Line Sharing Reconsideration Order* requires Ameritech Wisconsin to unbundle the Project Pronto DSL architecture and provide "fiber sharing" over that network, ignores paragraph 12, and other relevant paragraphs, that decline to order any specific unbundling or "sharing" obligations with respect to fiber loops and, in fact, state that any future obligations would depend on what the ILEC has actually deployed in its network. Despite the FCC's clear statements, the CLECs incorrectly assume that the FCC has imposed a blanket requirement that ILECs provide fiber sharing, and must do so regardless of the technical characteristics of those fiber loops. That simply is not the case. Again, the *Line Sharing Reconsideration Order* did "not mandate any particular means" of fiber sharing, and found that any future obligations would "largely turn on the *inherent capabilities of equipment that incumbent LECs have deployed, and are planning to deploy*, in remote terminals."

In any event, because any future fiber sharing obligations will "turn on the inherent capabilities" of Ameritech Wisconsin's equipment, the *Line Sharing Reconsideration Order* cuts *against*, rather than supports, the unbundling of DSL-related Project Pronto facilities and any "fiber sharing" obligations over those facilities. Indeed, the "inherent capabilities" of the DSL Project Pronto network dictate that the Commission reject any requirement to "fiber share" over Project Pronto DSL facilities. As Ameritech Wisconsin explained in its Initial Brief, the planned Project Pronto network carries data and voice transmissions on *separate fiber transport facilities.* Tr. Vol. 4 at 1108, 1111-13. The CLEC's proposal, if adopted, could force Ameritech Wisconsin to deploy its DSL-related Project Pronto facilities (if it chooses to deploy them at all) in a manner that it did not intend and, more importantly, in a manner that would be inefficient and more costly. More specifically, if adopted, the CLECs' proposal would require Ameritech Wisconsin, if it were to proceed with its planned deployment, to purchase and install additional

fiber, NGDLCs and OCDs. Thus, the CLECs' proposal ignores the FCC's express goal "of allowing incumbents to deploy whatever network architecture they deem to be more efficient." *Line Sharing Reconsideration Order*, ¶ 11.

Notably, the FCC's statements in the *Line Sharing Reconsideration Order* are consistent with the Eighth Circuit's decisions in *IUB I*[38] and *IUB III*,[39] that ILECs are not required to build new facilities or provide superior quality service to CLECs. In contrast to the FCC's statements, and *IUB I* and *IUB III*, the CLECs' proposal completely disregards Ameritech Wisconsin's planned deployment of DSL-related Project Pronto facilities, and recommends that those facilities be reconfigured and used in an entirely different manner than Ameritech Wisconsin contemplates.

It again should be emphasized that what is most clear from the *Line Sharing Reconsideration Order*, and what the CLECs patently ignores, is that the FCC specifically did not impose *any* unbundling obligations with respect to the DSL-related Project Pronto facilities that Ameritech Wisconsin plans to deploy. Rather, the FCC purposely withheld creating such new obligations in favor of conducting additional rulemakings that, among other things, request "comment on the feasibility of different methods of providing line sharing where an incumbent LEC has deployed fiber in the loop." *Id.* ¶ 12. More specifically, the FCC initiated rulemakings that will address all of the significant technical and legal issues covered by the CLECs' proposal, but with widespread industry participation and a much more developed record. These pending rulemaking proceedings seek comment on numerous issues regarding RTs, collocation, unbundling, and access to fiber portions of loops, including:

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[38] *Iowa Utils Bd. v. FCC*, 120 F. 3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*"IUB I"*).

[39] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000) (*"IUB III"*).

> "whether a requesting carrier may physically or virtually collocate its line card at the remote terminal by installing it in the incumbent's DLC for the purposes of line sharing" (¶ 56);
>
> the method of access provided by the SBC ILECs under the *Project Pronto Order* as an alternative to collocation of a DSLAM at an RT; (¶ 59)
>
> "whether the Commission can require such an arrangement [as offered under the *Project Pronto Order*] under our current unbundling rules" and, if not, "whether our unbundling rules should be modified to permit this type of arrangement. Specifically, we ask parties to address whether this type of arrangement should only be made available when there is no room for collocation at the remote terminal or whether incumbent LECs should be required to make such an offering in all circumstances when they deploy fiber in the loop" (*ibid.*);
>
> "whether it is technically feasible for competitors and incumbents to share the fiber feeder between the remote terminal and the central office" (¶ 60);
>
> "whether this type of shared access [to the fiber portion of a loop] can be achieved through purchasing unbundled packet switching capability" (¶ 63); and
>
> "should a similar type of platform [to the voice UNE-P] be made available to competitors to provide line-shared data services" What changes, if any, in our unbundling rules are necessary to effectuate such a offering? How would the UNE-data platform be define? How would the Commission's impairment analysis be applied to such a situation? What are the legal and policy reasons that favor and disfavor requiring the incumbents to make a UNE data-platform available, irrespective of the ability to collocate, for the purpose of enabling competitors to provide competing high-speed data services when fiber has been deployed in the loop?" (¶ 64).

Until these issues are resolved, the FCC has declined to impose any particular "fiber sharing" obligations on ILECs. *Line Sharing Reconsideration Order*, ¶ 12. This Commission should likewise stay its hand until the FCC addresses these specific issues on a complete record.

In an attempt to support their argument that Ameritech Wisconsin should be required to unbundle the Project Pronto DSL architecture and provide "fiber sharing" over those facilities, the CLECs attack Ameritech Wisconsin's assertion that it is technically infeasible to unbundle Project Pronto because " a single end user's DSL services does not occupy an accessible,

physical, end-to-end path" and the "physical parts . . .do not bear a one-to-one correspondence throughout the DSL service's path." CLEC Br. at I.C.-72-73. The CLECs assert that unbundled POTS loops have these same characteristics and, because POTS loops can be unbundled, it must be technically possible to unbundle the DSL Project Pronto facilities. Although the CLEC's argument has little to do with the legal issue of whether Ameritech Wisconsin is required to provide "fiber sharing," the CLECs are wrong.

As Ameritech Wisconsin explained in its Initial Brief (at 172-73), unlike the DSL Project Pronto facilities, traditional unbundled loops and unbundled DSL-capable loops provide a distinct physical path dedicated to the use of one end-user, extending from the end-user customer premises to the MDF at the central office, thereby providing the CLEC with a specific and constant amount of total bandwidth. In addition, each of these UNEs is accessible at both end-points with the same interface specifications (*i.e.*, bandwidth, signal characteristics, and physical connection) at both ends. Tr. Vol. 4 at 1095-99, 1140-42. Because the DSL-related Project Pronto facilities do not have these same characteristics, they cannot be unbundle. It also should be noted that, unlike unbundled loops, the planned Project Pronto network carries data and voice transmissions on *separate fiber transport facilities.* Tr. Vol. 4 at 1108, 1111-13. Accordingly, any "fiber sharing" obligations would prevent Ameritech Wisconsin from "deploy[ing] whatever network architecture [it] deem[s] to be more efficient" – contrary to the FCC's determination in the *Line Sharing Reconsideration Order*, and the 8th Circuit's decisions in *IUB I* and *IUB III.*

In sum, the *Line Sharing Reconsideration Order* does not lend support for the CLECs' DSL-related Project Pronto unbundling and collocation proposals. Because the FCC has initiated rulemakings covering the exact issues raised by the CLECs here, and given that this Commission's regulations must be consistent with the FCC's rules, the only prudent course for

the Commission is to avoid imposing any requirements that might later be rejected or substantially modified when the FCC weighs in.

(e) Assuming that the AT&T/Ameritech Arbitration award (05-MA-120) as adopted in the stipulation in the OSS case (6720-TI-160) requires Ameritech to make line splitters available:

1. How should Ameritech be required to make line splitters available, e.g. on a line-at-a-time, a shelf-at-a-time, or other basis?

The CLECs request that the Commission require Ameritech Wisconsin to make splitters available on any requested basis. CLEC Br. at I.C.-73. In support of their position, the CLECs point out that an Arbitration Panel required Ameritech Wisconsin to provide splitters to CLECs in the AT&T/Ameritech Wisconsin Arbitration, Docket No. 05-MA-120, October 12, 2000, at 79-80. As a preliminary matter, while the Arbitration Panel's decision in Docket No. 05-MA-120 requires Ameritech Wisconsin to provide line splitters, it does not require Ameritech Wisconsin to provide them on a shelf-at-a-time basis, as the CLECs are now requesting. Moreover, as explained fully in Ameritech Wisconsin's Initial Brief (at 105-11), and summarized below, the Arbitration Panel's decision requiring Ameritech Wisconsin to provide splitters as a UNE is not supported by existing law, and should be changed.

Among other things, the FCC's *Line Sharing Order* (at ¶ 76, 146) and *Texas 271 Order* (¶ 328) provide that an ILEC, in its sole discretion, may *choose* to provide its own splitters. In fact, in the *Texas 271 Order,* the FCC specifically found that the splitter is *not* a UNE.[40]

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[40] The FCC stated in paragraph 327 of the *Texas 271 Order* that it "has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter and incumbent LECs therefore have no current obligation to make the splitter available." The FCC further stated (at ¶ 328) that "[t]he *UNE Remand Order* cannot fairly be read to impose on incumbent LECs an obligation to provide access to their splitters." In fact, the FCC held that the splitter is *not* part of the loop or its associated electronics, which the FCC had chosen to unbundle, but rather is part of the packet switching network element, which the FCC has chosen not to unbundle (except in limited circumstances not applicable here). *Texas 271 Order*, ¶ 327.

Because the FCC has held that the splitter is not a UNE, this Commission cannot lawfully require Ameritech Wisconsin to provide them to CLECs. Indeed, where the FCC has spoken on an unbundling issue by making an "affirmative finding as to whether or not the particular element now satisfies the unbundling standards of the Act" (*UNE Remand Order*, ¶ 157), its pronouncement "draw the lines to which [State commissions] must hew."[41] It also should be noted that, although the FCC stated in the *Line Sharing Reconsideration Order* (at ¶ 25) that it will again consider issues surrounding splitter ownership in a future rulemaking proceeding, it pointedly did *not* change the existing law on this issue, which provides that ILECs do not have to provide splitters to CLECs. *See* AW Br. at 105-108.

The Arbitration Panel's requirement that Ameritech Wisconsin provide the splitter as a UNE also is unlawful, because Ameritech Wisconsin is required to unbundle only components of its existing network, *UNE Remand Order*, ¶ 324; *IUB I*, 120 F.3d at 813, and splitters are not elements of Ameritech Wisconsin's existing network. Additionally, even if the splitter were an existing component of Ameritech Wisconsin's network, Ameritech Wisconsin cannot be required to provide the splitter as a UNE, because it does not pass either the "necessary" or the "impair" test of section 251(d)(2). Specifically, splitters are manufactured by a variety of third parties and available on the open market from a variety of vendors. All CLECs have the same ability to obtain splitters as Ameritech Wisconsin has, simply by placing a purchase order with the same vendors that Ameritech Wisconsin utilizes. Accordingly, CLECs have the ability to separate the high and low frequency portions of the loop, and share that loop with another CLEC, even without access to an ILEC-owned splitter. Tr. Vol. 1 at 261, 390. And, in fact, many

[41] *IUB II*, 525 U.S. at 378 n.6 (State commissions must regulate "in accordance with federal policy"); *UNE Remand Order*, ¶ 154 (state-imposed unbundling duties must "meet the requirements of section 251 and the national policy framework instituted in this Order").

CLECs already doing so. Under such circumstances, it cannot be said that the "necessary" and "impair" standards have been met. *See* AW Br. at 108-109; Tr. Vol. 1 at 261, 390.

Putting aside the fact the Ameritech Wisconsin legally cannot be required to provide splitters to CLECs, the CLECs' request that Ameritech Wisconsin be required to provide splitters on a shelf-at-a-time basis, when it voluntarily provides them a line-at-a-time, should be rejected, because it create several technical and operational problems. Indeed, despite the CLECs' assertion that there is "no technical reason" why Ameritech Wisconsin cannot provide splitters on a shelf-at-a-time basis, the record establishes the opposite. As fully explained in Ameritech Wisconsin's Initial Brief (at 111-116), providing splitters on a shelf-at-a-time basis is problematic for the following reasons: (1) Ameritech Wisconsin's inventory system has technical limitations that prevent it from accommodating both line-at-a-time and shelf-at-a-time provisioning;[42] (2) requiring Ameritech Wisconsin to provision splitters on a shelf-at-a-time basis will lead to premature exhaust of the main distribution frame ("MDF"); and (3) in terms of investment costs and the risk of stranded investment, it is economically more efficient for Ameritech Wisconsin to provide splitters on a line-at-a-time basis than it is to provide splitters on a shelf-at-a-time basis. Tr. Vol. 1 at 261-269.

The CLECs, however, entirely ignore these technical and operational problem, claiming that providing splitters on a shelf-at-a-time basis actually will benefit Ameritech Wisconsin. Although the CLECs provide no rationale, they argue that providing splitters a shelf-at-a-time will actually "resolve Ameritech's . . . concerns about having unused, stranded equipment" and will "allow Ameritech to earn additional revenues." CLEC Br. at I.C.-74. The CLECs are

[42] As Ameritech Wisconsin explained in its Initial Brief, Ameritech Wisconsin engineered its facilities to provision splitters on a line-at-a-time basis at the request of CLECs, who now seek to require Ameritech Wisconsin to upgrade its system once again to accommodate their new-found desire for shelf-at-a-time provisioning. *See* AW Br. at 112; Tr. Vol. 1 at 261-265.

wrong. As Ameritech Wisconsin explained in its Initial Brief (at 115-116), splitter technology is in its infancy, and it is likely that technological advances coupled with expected decreases in the cost of integrated DSLAM equipment will render existing splitters obsolete. Accordingly, the widespread deployment of a particular type of splitter technology could leave Ameritech Wisconsin with a potentially significant stranded investment.[43] Unlike shelf-at-a-time provisioning, line-at-a-time provisioning minimizes this risk of stranded investment, because it allows high utilization within a shelf (because multiple CLECs would be assigned to the shelf, rather than the entire shelf being dedicated to one CLEC). Ameritech Wisconsin should be permitted to provide Ameritech Wisconsin-owned splitters in the most efficient way possible, to alleviate the real risks of stranded investment. It simply is unreasonable to subject Ameritech Wisconsin to the increased risk of stranded investment associated with shelf-at-a-time provisioning, particularly where CLECs themselves are free to purchase their own splitter shelves.[44] Tr. Vol. 1 at 262-264.

The CLECs also claim that requiring Ameritech Wisconsin to provide splitters on a shelf-at-a-time basis would "avoid unnecessary duplication of facilities that would occur if both CLECs and ILECs had to install their own line splitters." As a preliminary matter, the CLECs' argument incorrectly assumes that all other CLECs share their desire to use ILEC-owned splitters, instead of their own splitters. There is no evidence to support this claim. In fact, many data LECs already purchase and use their own splitters to provide service. Moreover, the

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[43] Given that Ameritech Wisconsin does not provide retail DSL services and hence does not lease or utilize the HFPL UNE, it is unlikely that Ameritech Wisconsin would be able to reuse any excess splitter capacity that would result from a shelf-at-a-time provisioning requirement, thereby creating a strong likelihood of stranded investment. Tr. Vol. 1 at 262-264.

[44] It is unrefuted that Ameritech Wisconsin is in no better position to purchase splitters, which are available only from third-party vendors, than the CLEC themselves. Tr. Vol. 1 at 261.

CLECs' goal of avoiding duplicative facilities is better served by CLECs providing their own splitter shelves, rather than relying on Ameritech Wisconsin to provide such splitter shelves. As the CLECs state, "[t]here will be situations in which a CLEC will only need to purchase splitters on a line-at-a-time basis, but there will be other in which shelf-at-a-time provisioning is more cost-effective." CLEC Br. at I.C.-75. The CLECs clearly are in a much better position than Ameritech Wisconsin to anticipate when this will occur, and to stock the correct number and type of splitters that they will need; thereby avoiding purchasing too few or too many splitters. The CLECs nevertheless seek to impose an obligation on Ameritech Wisconsin to accurately predict how many and which type of splitters every CLEC will want. It clearly would be more economical and efficient for CLECs to obtain splitter shelves themselves, rather than requiring Ameritech Wisconsin to anticipate CLEC demand.

In further support of their proposal for shelf-at-a-time provisioning, the CLECs claim that "it would promote further local competition and the availability of multiple providers." CLEC Br. at I.C.-74. Again the CLECs are wrong. To the contrary, requiring Ameritech Wisconsin to provide splitters a shelf-at-a-time could reduce the potential number of competitors that could gain access to Ameritech Wisconsin's HFPL product using Ameritech Wisconsin-owned splitters. As Ameritech Wisconsin explained in its Initial Brief, (at 116), shelf-at-a-time provisioning allows CLECs to reserve splitter capacity for themselves, to the exclusion of other potential competitors. When one CLEC reserves an entire splitter shelf for its own use, none of the ports on that shelf are available for use by other CLECs. In contrast, if Ameritech Wisconsin provides its own splitters a line-at-a-time, multiple CLECs can be assigned to the same shelf,

thereby allowing more CLECs to gain access to the HFPL UNE using Ameritech Wisconsin-owned splitters.[45]

For these reasons, and all of the reasons set forth in Ameritech Wisconsin's Initial Brief (at 105-116), the Commission must reject the CLECs' proposal that Ameritech Wisconsin be required to provide splitters on a shelf-at-a-time basis.

2. Should Ameritech be required to provide nondiscriminatory access, at just and reasonable rates, to its OSS systems to support line splitter availability?

a. If so, how should the cost be determined?

Ameritech Wisconsin will develop and make available the associated operations support systems ("OSS") and other processes to permit FCC-defined "line sharing" (access to the HFPL) and FCC-defined "line splitting" (CLECs self-supply and collocate their own splitters and establish the necessary CLEC-to-CLEC service arrangements themselves). However, Ameritech Wisconsin is not required to develop and make available OSS processes to support a CLEC's sharing of an unbundled loop with another carrier, which the CLECs incorrectly call "line-splitting." Such a requirement would be contrary to the FCC's rulings in the *Line Sharing Order*, *Texas 271 Order* and *Line Sharing Reconsideration Order.*

The CLECs fail to set forth any argument or basis for their position that Ameritech Wisconsin should be required to provide OSS and other processes to permit CLEC-defined "line splitting" (which is not line splitting at all, because it is far different than FCC-defined line splitter), other than to say that the Commission should follow the decision of the Arbitration

[45] In order to eliminate the incentive for CLECs to engage in such uneconomic "free-riding" behavior, if the Commission were to require Ameritech Wisconsin to offer splitters on a shelf-at-a-time basis when voluntarily offered a line-at-a-time, at a minimum, the Commission should require CLECs who lease Ameritech Wisconsin-owned splitter shelves to pay charges as if they were utilizing the entire shelf.

Panel in Docket No. 05-MA-120. For the reasons fully explained in Ameritech Wisconsin's Initial Brief (at 116-118), the Commission should not, and legally cannot, reach the same conclusion as the Arbitration Panel.

(f) Assuming that the AT&T/Ameritech Arbitration award (05-MA-120) as adopted in the stipulation in the OSS case (6720-TI-160) requires Ameritech to provide line splitting over UNE-P:

1. Should Ameritech be required to provide its line splitters to CLECs under UNE-P arrangements?

For the reasons explained above, Ameritech Wisconsin has no legal obligation to provide splitters to any CLECs under any circumstances, including CLECs utilizing the UNE-P. In fact, when it comes to UNE-P CLECs, the FCC affirmatively requires them, not the ILEC, to provide their own splitters – or partner with a data CLEC that provides the splitter – if they want to engage in "line-splitting." *Line Sharing Order, Texas 271 Order* (at ¶ 325) and *Line Sharing Reconsideration Order* (¶ 19). Ameritech Wisconsin also cannot be required to provide splitters to UNE-P CLECs because, under the Eighth Circuit's decisions in *IUB I* and *IUB III*, Ameritech Wisconsin cannot be required to provide new combinations of network elements. Tr. Vol. 1 at 270. The CLECs' "line spitting" proposal (which is far different than FCC-defined line splitting), however, would improperly require Ameritech Wisconsin to separate currently combined UNEs (UNE DSL-capable loop and the UNE switch port) and re-combine those UNEs with a new "UNE splitter."

The CLECs fail to set forth any argument or basis for their position that Ameritech Wisconsin should provide splitters to CLECs under UNE-P arrangements, other than to say that the Commission should follow the decision of the Arbitration Panel in Docket No. 05-MA-120. For the reasons fully explained in Ameritech Wisconsin's Initial Brief (at 118-122), the Commission should not, and legally cannot, reach the same conclusion as the Arbitration Panel.

2. Where should splitters be placed?

The CLECs argue that a location at or near the main distribution frame ("MDF") is the most efficient location for the splitter because it minimizes the number of cross connects and the length of tie cables. CLEC Br. at I.C.-77. In response, Ameritech Wisconsin reiterates that nothing in the federal Act, the FCC's *Line Sharing Order*, or any other FCC order authorizes CLECs to dictate where splitters are located in ILEC offices. And it is worth stating again that the *GTE* case vacated FCC rules that gave CLECs the ability to choose where to establish collocation arrangements on an ILEC property. The *GTE* Court noted that nothing in the Federal Act "endorses this approach." *GTE Services Corporation, et al. v. Federal Communications Commission, et. al.*, 205 F. 3d 416, 426 (D.C. Cir. 2000).

Additionally, the record establishes that frame-mounted splitters are not the most efficient arrangement when viewed from the perspective of Ameritech Wisconsin's provision of service to other customers, because (1) using frame-mounted splitters would lead to quicker frame exhaust, (2) the cost of frame mounted splitters is higher than the cost of a bay-mounted splitters, and (3) there is no reasonable method to perform maintenance on the splitter card if it fails on a frame-mounted splitter. Tr. Vol. 1 at 261-269. As Ameritech Wisconsin explained in its Initial Brief (at 111-116), the CLECs' efficiency argument looks at efficiency solely from their own economic perspective and desire to limit their cabling costs. Their request is merely an attempt to have the Commission favor their needs over the needs of all other CLECs and of Ameritech Wisconsin to have sufficient space on the MDF, which this Commission should not, and cannot, do.

(g) How should the cost of line splitters and placement be determined?

Ameritech Wisconsin's proposed monthly recurring splitter price (which applies only when the CLEC uses an Ameritech Wisconsin-owned splitter) is reasonable, complies with the

FCC's TELRIC Rules, and should be adopted. The CLECs fail to set forth any argument or basis for their opposition to Ameritech Wisconsin's proposed price, other than to summarily claim that the Ameritech Wisconsin's cost study erroneously assumes: (1) low fill factors; (2) inflated installation costs; (3) inflated time estimates; (4) the use of the IDF; and, (5) the use of rack-mounted splitters. CLEC Br. at I.C.-77-78. These assertions lack merit.

As a preliminary matter, out of the five purported "errors" listed by the CLECs, only fill factors and installation costs relate to the line splitter itself, as the others related to cross connect charges. As fully explained in Ameritech Wisconsin's Initial Brief (95-96), the splitter fill factor used by Ameritech Wisconsin in its cost study is based on actual fill data for Ameritech Wisconsin's splitters, is fully supported and is proper to use in the cost study. With respect to the installation factor, the splitter *is* classified as a piece of Account 357 equipment for plant accounting purposes, and it is reasonable for Ameritech Wisconsin to use an installation factor developed for that category of equipment, as Ameritech Wisconsin has done here.[46] Tr. Vol. 1 at 45.

Turning to the other purported errors, the record establishes that Ameritech Wisconsin's time estimates are reasonable. Tr. Vol. 1 at 28. The CLECs have presented no credible evidence to the contrary. Additionally, Ameritech Wisconsin's cost study properly assumes the use of IDFs, because the forward-looking central office frame design for Ameritech Wisconsin includes the use of IDFs, and using IDFs is the most efficient way to manage the full range of services Ameritech Wisconsin offers. Tr. Vol. 1 at 44, 307-08. Moreover, as alluded to above, it is

[46] An installation factor represents the average installation cost based on the material price of an item. This is the most efficient way for Ameritech Wisconsin to associate investment in raw material (*i.e.,* equipment material price) with the total installed investment. This costing methodology is and has been a standard costing practice and is appropriate for the development of the recurring splitter cost. Tr. Vol. 1 at 45.

proper for Ameritech Wisconsin's cost study to assume a network design that includes frame-mounted splitter, rather than a rack-mounted splitter, because: (1) Ameritech Wisconsin is *not* deploying frame-mounted splitters and cannot lawfully be required to set prices that assume it is doing so; (2) Ameritech Wisconsin must engineer its network to provide a universe of services, not just DSL services for CLECs, as the CLECs' frame-mounted splitter proposal would have Ameritech Wisconsin do; and (3) rack mounted splitters are more cost efficient than frame mounted splitters. Tr. Vol. 1 at 42-43, 304.

(4) What subloop elements should be provided and what subloop elements must be priced?

Ameritech Wisconsin's subloop cost study properly incorporates many of the same assumptions (such as those regarding fill factors) that are reasonable and that were properly used in its unbundled loop study. Its subloop study should therefore be adopted. Ameritech Wisconsin has fully described its subloop offerings and how those offerings are consistent with the FCC's requirements AW Br. at 126-27. Ameritech Wisconsin also explained that it has voluntarily committed to modify its network and allow access to additional subloops through the Engineering Controlled Splice ("ECS") access point. *Id.* at 127-28.

The CLECs argue in their brief that Ameritech Wisconsin's subloop study improperly double counts investments in splice cases and terminals. Ameritech Wisconsin has already explained why this is simply not the case and refers the Commission to its discussion on pages 129-30 of its opening brief. Allowing subloop access requires additional connections to be made between the CLEC and the various subloop access points. These connections are not present in the unbundled loop, and therefore, the unbundled loop study does not (and does not need to) account for the costs of these connections via separate rate elements. Additional rate elements are necessary, however, in the subloop study to account for the costs of these connections, which

exist only when providing unbundled subloops, and which are recurring costs because they contribute to exhaust of the facilities.

The CLECs' next raise a series of arguments regarding the "unbundling" of Project Pronto, access to Project Pronto copper subloops and whether "line sharing" occurs on those subloops. CLEC Br. at I.C.-80-82. Ameritech Wisconsin addresses these arguments in its opening brief and in this reply brief at section I.C.(6).

Finally, the CLECs assert Ameritech Wisconsin's subloop cost study does not permit CLECs sufficient access to multiple-dwelling units ("MDUs") and campus settings. CLEC Br. at I.C.-82. Ameritech Wisconsin has already explained why its subloop offerings *do* allow CLECs to adequately access these units, and how the CLECs may access these units. AW Br. at 130-31. Ameritech Wisconsin provides access to the single demarcation point (which may be used as the single point of entry ("SPOI")) in single demarcation properties, and it will construct a SPOI to allow CLECs to access multi-demarcation properties.

(5) To what degree is Ameritech required under federal law and to what degree should it be required under state law to offer extended loops, and collocation of DSLAMs?

(a) What connections must be afforded at remote terminals and in the CO to access those elements?

Ameritech Wisconsin discussed extensively (AW Br. at 131-38) the conditions under which it must offer extended loops and collocation of DSLAMs and refers the Commission to that discussion. The CLECs do not challenge the discussion regarding extended loops, and their arguments regarding DSLAM collocation are addressed in Ameritech Wisconsin's opening brief and at I.C.(6)(c) of this reply brief.

(b) What means of unbundling Digital Loop Carrier (DLC) systems should be required? (*i.e.*, dedicated path or mixed traffic facilities)

(c) Should unbundling requirements be different depending on DLC technology (e.g. UDLC vs. IDLC) or loop facilities (e.g. copper vs. fiber)?

1. **If so, which of the following options should be required?**

   a. **Initial cap integrated network architecture?**

   b. **Multiple switch hosting?**

   c. **Digital cross-connect grooming?**

   d. **Side-door grooming?**

(d) **How should the various unbundling scenarios in (c) and (d) be priced?**

1. **Should the price for unbundling scenarios be determined based on individual scenarios or as a meld?**

2. **As an interim or permanent pricing option should UDLC loop UNEs be priced no higher than IDLC loop UNEs until IDLC unbundling is achieved?**

Ameritech Wisconsin has already fully addressed these issues in its discussions under section I.C.(2)(j)(2) in its opening and reply briefs. Ameritech Wisconsin's unbundled loop rates should not be based on the assumption that the loops will be provisioned over IDLC because (1) IDLC systems cannot be cost-effectively unbundled; (2) UDLC, not IDLC, is the least-cost, forward-looking technology for provisioning unbundled loops; and (3) therefore, basing unbundled loop rates on IDLC rather than UDLC would be inconsistent with TELRIC principles and therefore violative of federal law.

(6) **Should Project Pronto architecture be unbundled, including subloops, extended loops, collocation of DSLAMs and packet switching elements?**

INTRODUCTION

As fully explained in Ameritech Wisconsin's Initial Brief, from both a legal and policy perspective, the Commission must reject the CLECs' proposal to unbundle the Project Pronto DSL architecture and allow the so-called "collocation" of line cards in Ameritech Wisconsin's NGDLCs. Adoption of the CLECs' Project Pronto UNE/line card collocation proposal would be unlawful, and would seriously and adversely affect competition and the deployment of Project Pronto DSL facilities in Wisconsin.

More specifically, the CLECs' so-called "unbundling" and "collocation" proposals are an attempt to co-engineer Ameritech Wisconsin's future Project Pronto DSL network. The CLECs' proposals would have Ameritech Wisconsin invest additional funds and time to build a network that would accommodate these particular data CLECs' business plans, to the detriment of competition and Wisconsin consumers. Although the record clearly establishes that the CLECs' wished-for design of the Project Pronto DSL architecture is far different (and far more inefficient and costly) than the architecture SBC plans to deploy, the CLECs attempt to convince the Commission that they "are not asking Ameritech to make line shared DSL services available when it has not built that capacity" and they do "not ask Ameritech to unbundle network elements that it is not deploying." As explained herein, and as the record establishes, these assertions are not true. In the first place, the CLECs are not seeking "line-shared DSL services" at all. Ameritech Wisconsin already provides access to the HFPL in accordance with the FCC's rules; what the CLECs are seeking is exclusive control and use of Ameritech Wisconsin's planned new investment in advanced services. Moreover, despite the CLECs' claim that they are not asking Ameritech Wisconsin to deploy facilities and capacity that Ameritech Wisconsin does not plan to deploy with Project Pronto, Sprint later insists that "Ameritech should not be permitted to *engineer* its network" in a manner that purportedly will "monopolize advanced services." Sprint Br. at 7. This assertion reveals that the CLECs truly seek to co-engineer the Project Pronto DSL architecture and force Ameritech Wisconsin to redesign its planned Pronto DSL network and build a different network that will satisfy the business needs of these particular CLECs alone.

The CLECs' co-engineering proposals would introduce inefficiencies into the Project Pronto network and create added costs that likely would sound the death knell for Ameritech

Wisconsin's continued deployment of Project Pronto DSL facilities, as well as similar new investment in DSL facilities by other Wisconsin ILECs. Although the CLECs recommend that the Commission "not heed Ameritech's idle regulatory threats," the fact remains that, if Ameritech Wisconsin is forced to choose between deploying the inefficient, costly DSL network dreamed up by the CLECs or no Pronto DSL network at all, sound economic principles would dictate that Ameritech Wisconsin choose the latter. As Ameritech Wisconsin explained in its Initial Brief (at 156-157), SBC was faced with that very dilemma in Illinois after the Illinois Commerce Commission ("ICC") ordered Ameritech Illinois to unbundle numerous Project Pronto "UNEs" and allow the "collocation" of CLEC-owned line cards in Ameritech Illinois' NGDLC RTs. As a result of the ICC's decision, and the uneconomic consequences and technical problems and inefficiencies that such requirements would create for SBC's planned Project Pronto DSL architecture, SBC reluctantly suspended deployment of DSL-related Project Pronto facilities in Illinois.[47]

In addition to the adverse effect that adoption of the CLECs' proposal would have on consumers, competition and deployment of Project Pronto DSL facilities in Wisconsin, the CLECs' Project Pronto UNE/line card collocation proposal cannot withstand legal scrutiny for at least seven reasons. *First*, the CLECs' proposal conflicts with section 706 of the Act and federal policy regarding the promotion of advanced services deployment and, therefore, is preempted. *Second,* the CLECs' proposal would require the "unbundling" of packet switching functionality, in violation of FCC Rule 319. *Third,* the CLECs have failed to establish the each proposed new UNE satisfies the mandatory "impair" test of section 251(d)(2) of the federal Act. *Fourth,* the CLECs' Project Pronto "unbundling" and line card "collocation" proposals fail to satisfy the

[47] Notably, the Illinois Commission has granted rehearing of its "unbundling" and "collocation" requirements in its Docket No. 00-0393.

standards of section 261(c), which requires any state unbundling requirement to be "necessary to further competition" and "not inconsistent with . . . the [FCC's] regulations." *Fifth,* the CLECs' Project Pronto "unbundling/collocation" proposal threatens to illegally require Ameritech Wisconsin to install or construct new facilities solely to meet the CLECs' "unbundling" request, in violation of the Eighth Circuit's holdings in *IUB I* and *IUB III. Sixth,* the CLECs' so-called NGDLC line card "collocation" proposal does not meet the legal standards for collocation. *Seventh,* adoption of the CLECs' Project Pronto UNE/line card collocation proposal would violate section 253 of the Act, which prohibits any state regulation or legal requirement that "may prohibit or *have the effect of prohibiting* the ability of *any* entity to provide *any* interstate or intrastate telecommunications service." 47 U.S.C. § 253(a) (emphasis added). Ameritech Wisconsin fully explains these legal positions in its Initial Brief.

The CLECs largely ignore the cost implications and legal flaws of their proposals in favor of positing unsupported assertions that the Commission must unbundle Project Pronto in order to prevent Ameritech Wisconsin from "monopolizing high speed data services," "freez[ing] CLECs out from providing individualize advanced services offerings," and "destroy[ing] the opportunity for CLECs to provide advanced services." Sprint Br. at 1, 7. These assertions, however, lack any factual basis, and have been affirmatively refuted by the FCC and others. The CLECs' resort to such "name calling" is merely a smoke screen to hide the fact that the CLECs have not provided, and cannot provide, evidence sufficient to meet the aforementioned legal tests – particularly, the "impair" standard of section 251(d)(2) and the conditions in the FCC's packet switching rule.

While the CLECs baldly assert that Ameritech Wisconsin will "monopolize" high speed Internet service unless the Project Pronto DSL architecture is unbundled, the FCC has found

directly to the contrary. Specifically, the FCC has concluded that "preconditions for monopoly appear absent" in the advanced services arena,[48] in light of "the competitive nature of the broadband market," the "number of consumer broadband options within the various broadband technologies," and the existence of "price competition" between numerous competing technologies, including cable modem, satellite and wireless advanced services.[49] In any event, Ameritech Wisconsin does not provide DSL service or any high speed data services to consumers and therefore does not, and has no ability to, monopolize that market. And there is no evidence that, absent the unbundling of Project Pronto DSL facilities, Ameritech Wisconsin's affiliated CLEC (AADS) will be in a better position to provide advanced services than other data CLECs or that it somehow could or would monopolize high speed Internet service. In fact, the record establishes that Ameritech Wisconsin has provided and will continue to provide unaffiliated CLECs with access to its network on the exact same terms and conditions that it has made available to AADS.

The CLECs' unsupported suggestion that they cannot compete against AADS and other Internet providers absent the unbundling of Project Pronto DSL facilities also is refuted by the FCC's findings in the *Project Pronto Order.* Among other things, the FCC found that its line card ruling "*paves the way* for Rhythms and other carriers to *compete for . . . consumers*" who would not be able to receive DSL service but for SBC's voluntary – and discretionary – decision to roll out Project Pronto at this time. *Id.*, ¶ 28. The FCC also expressly found in its *Project Pronto Order* that "allowing SBC's incumbent LECs to own, install, and operate" the line cards used with Project Pronto NGDLCs, subject to the terms and conditions set forth in the Order,

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[48] *First Advanced Services Report*, ¶ 48.

[49] *Fixed Wireless Competition Order*, ¶ 23.

will promote the pro-investment and pro-competitive objectives of the Act. *Project Pronto Order*, ¶¶ 1-2, 10. More specifically, the FCC found that SBC ownership and control over line cards would "speed the deployment of ADSL service availability to 77 million customers" across the country, while at the same time giving CLECs an "*immediate opportunity to compete against SBC* in the mass market," including by "differentiating their product offerings."

In short, there is no evidence whatsoever that Ameritech Wisconsin or AADS somehow could or would monopolize the advanced services market absent the unbundling of Project Pronto, or that CLECs could not "compete on equal terms with Ameritech without unbundled access to the network elements that make up Project Pronto." Sprint Br. at 6-7. To the contrary, those assertions are refuted by the undisputed marketplace facts. As a threshold matter, it is beyond question there is no such thing as a "DSL market," notwithstanding the CLECs' repeated misrepresentations to that effect. Rather, DSL is but one technology that competes with numerous other technologies, including cable modem services, in the broadband high-speed Internet access and data services market. In addition, the record establishes that Ameritech Wisconsin's deployment of Project Pronto DSL facilities would enable data CLECs to compete more effectively against other providers of advanced services, such as cable companies, through use of the wholesale Broadband Service, which would give CLECs access to advanced services consumers that they otherwise could not easily reach. The CLECs' "bite the hand that feeds you" approach not only would harm CLECs providing data services, but more importantly, would harm all Wisconsin consumers, by depriving them of a competitive choice for obtaining high speed Internet access.

For all of these reasons and as further explained below, the Commission should reject the CLECs' Project Pronto UNE/line card collocation proposal.

ARGUMENT

I. SCOPE OF THE COMMISSION'S AUTHORITY TO ORDER THE UNBUNDLING OF PROJECT PRONTO.

Sprint engages in an exhaustive monologue concerning the Commission's authority under federal and state law to unbundle the Project Pronto DSL facilities. Sprint Br. at 16-22. Sprint Br. at 16-22. While Ameritech Wisconsin agrees that, under certain circumstances, a State commission can add to the FCC's national list of UNEs, this does not mean that the Commission can properly unbundle the Project Pronto DSL architecture. A State commission's authority to order additional unbundling of network elements is limited in several respects. Among other things, under section 261(c) of the 1996 Act, a State commission cannot grant a CLECs' unbundling request unless the proposed new UNE (or UNEs) is "not inconsistent" with the FCC's unbundling rules and is "necessary" to promote competition. 47 U.S.C. §261(c). If, and only if, these requirements are satisfied, a State commission can create new UNEs only if it meets the "necessary" and "impair" standards of section 251(d)(2). As explained further in Parts III and IV below, the Commission cannot grant the CLECs' proposal to create multiple Project Pronto UNEs, because that proposal is directly contrary to the FCC's rule on packet switching and, even if that rule did not exist, the CLECs' proposal neither meets the "impair" standard of section 251(d)(2) nor satisfies the "necessary to promote competition" requirement of section 261(c).

The remaining arguments made by Sprint in this section of its Brief (titled "This Commission Has Authority to Unbundle Project Pronto and To Prescribe Additional UNEs") are completely unrelated to the legal analysis that the Commission must perform when deciding whether to unbundle the Project Pronto architecture. Rather, Sprint attempts to muddy the waters and divert attention away from the illegality and infeasibility of the CLECs'

unbundling/collocation proposal, and encourages the Commission to grant the CLECs' proposal without considering the real issues in this case. The Commission must disregard these baseless, irrelevant arguments.

For example, Sprint confuses the unbundling of Project Pronto with the HFPL UNE. Specifically, Sprint claims that the FCC's requirement in the *Line Sharing Reconsideration Order* that ILECs provide the HFPL UNE somehow gives the Commission authority to unbundle Project Pronto. Sprint Br. at 20. Sprint is wrong. The *Line Sharing Reconsideration Order* and the requirement that Ameritech Wisconsin provide the HFPL UNE to CLECs have absolutely nothing to do with whether Ameritech Wisconsin should be required to unbundle the Project Pronto "UNEs" proposed by the CLECs in this case. The CLECs are merely trying to bootstrap their unbundling proposal to the HFPL UNE, which the FCC has already unbundled and which Ameritech Wisconsin already provides to CLECs.

Indeed, despite Sprint's suggestion that the proposed Project Pronto "UNEs" are somehow related to the HFPL UNE that Ameritech Wisconsin is required to provide, there is no "line sharing" on the Project Pronto facilities between the remote terminal ("RT") and the central office ("CO"). Rather, the data and voice transmissions travel on separate fibers from the RT to the CO. Tr. Vol. 4 at 1108, 1111. The voice transmission path from the RT travels over a separate Time Division Multiplexed ("TDM") fiber-optic transport facility (an OC-3) to the CO, where it terminates at a separate Central Office Terminal ("COT"). Tr. Vol. 4 at 1111-1113. The data transmission, on the other hand, is digitized and packetized by other hardware and software within the NGDLC and transported over a packet switched fiber-optic facility (an OC-3c) to the central office. The *Line Sharing Reconsideration Order* (at ¶ 12) does not require

Ameritech Wisconsin to redesign its network to carry voice and data transmission on the same facilities.

As Ameritech Wisconsin explained in its Initial Brief (at 103-105), although the *Line Sharing Reconsideration Order*[50] states that the requirement for ILECs to provide access to the HFPL of a copper loop, as defined by the FCC, applies to copper sub-loops that are fed by fiber, the *Order* does not impose any "fiber-sharing" obligations on incumbent LECs and certainly does not impose any fiber sharing conditions on the DSL-related Project Pronto facilities that Ameritech Wisconsin plans to deploy. The FCC specifically found that an ILEC's obligation to provide access to the HFPL of copper sub-loops would depend on what the ILEC *actually deployed* in its existing network and the technical capabilities of that network, *not* on what CLECs would like the ILEC to deploy in its network.

In yet another baseless attempt to convince the Commission to unbundle Project Pronto, Sprint asserts that the FCC's consideration in various pending rulemaking proceedings of the same unbundling and collocation proposals that the CLECs raise here "should not stop this Commission from ruling in the same manner" as the Illinois Commission.[51] Sprint Br. at 17. While the FCC's consideration of these very same issues may not preclude this Commission from rendering a decision on those issues, the critical point is that any decision made by the FCC in its three pending rulemakings will have *preemptive force* over any decision rendered by the Commission in this case. The Commission should not risk conflicting with the FCC's ultimate

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[50] *Third Report and Order On Reconsideration in CC Docket No. 98-147 and Fourth Report and Order on Reconsideration in CC Docket No. 96-98* (January 19, 2001) ("*Line Sharing Reconsideration Order*").

[51] Notably, the ICC has granted rehearing of its initial decision in Docket No. 00-0393, and the Staff of the Illinois Commerce Commission is now recommending that *only* the entire end-to-end Project Pronto DSL platform (from the CO to the end-user premises) be unbundled as a single NGDLC platform.

rulings and policy statements on these significant national policy issues. Indeed, if the Commission's decision proves inconsistent with the FCC's ultimate conclusions and, therefore, is nullified, there likely would be serious adverse consequences to Ameritech Wisconsin and Wisconsin consumers. *See* AW Br. at 227-229.

For example, if the Commission were to adopt the CLECs' proposal (and assuming SBC moved forward with the deployment of Project Pronto in those circumstances), Ameritech Wisconsin would be required to spend substantial time and money to comply with the new requirements. If the Commission's determination were later nullified by the FCC's decision in the rulemaking proceedings, Ameritech Wisconsin would have unnecessarily wasted its resources and likely would be unable to recover those expenditures. Conversely, if the Commission were to adopt the CLECs' proposal and, as a result, SBC chose to not move forward with the deployment of Project Pronto because of concerns about its economic viability, Wisconsin consumers would be deprived of a competitive choice for obtaining high-speed Internet access. Accordingly, it would be unwise for the Commission to prejudge these significant national policy issues pending before the FCC. *See* AW Br. at 227-229.

Sprint also tries to convince the Commission to adopt the CLECs' unbundling/collocation proposal because "the FCC's order permitting the SBC/Ameritech ILECs rather than their advanced services affiliates to own the line cards and OCDs" purportedly "is not a determination that those pieces of equipment or the entire Broadband Offering do not have to be unbundled." Sprint Br. at 20. While the FCC is today in the midst of rulemakings to further consider the legality and wisdom of line-card collocation and related NGDLC issues in CC Docket Nos. 98-147 and 96-98, the CLECs' suggestion that the *Project Pronto Order* did not reject their line card collocation proposal simply is wrong. The FCC expressly declined to adopt the CLECs'

line card collocation proposal, which the CLECs had specifically urged the FCC to impose in numerous *ex partes*, and found that "allowing SBC's incumbent LECs to own, install, and operate" the line card used with Project Pronto NGDLCs, subject to the terms and conditions set forth in the Order, would promote the pro-investment and pro-competitive objectives of the Act. *Project Pronto Order*, ¶¶ 1-2, 10.

In a further attempt to divert attention away from the legal analysis the Commission must make in this case, the CLECs spend numerous pages of their briefs encouraging the Commission to blindly follow the Illinois Commerce Commission's ("ICC") initial Order in Docket No. 00-0393, which required Ameritech Illinois to unbundle various Project Pronto "UNEs" and permit CLECs to "collocate" line cards in Project Pronto NGDLCs. Even assuming that an Illinois decision could or should have any weight in this case (which it cannot and should not), the ICC wisely granted rehearing in that docket in order to reconsider both its "unbundling" and "collocation" requirements. The CLECs nevertheless repeatedly cite the ICC's decision as support for their position in this case, even though there is not yet any order on rehearing in that docket.

Notably, absent from the CLECs' "do what other Commissions have done" appeal is any discussion of the numerous State commission decisions that have declined to unbundle Project Pronto and similar DSL networks deployed by other ILECs. For instance, the Michigan Public Service Commission ("MPSC") rejected a CLEC proposal to unbundle the Project Pronto architecture.[52] The MPSC found that "Ameritech Michigan's broadband and combined voice and data service offerings will provide immediate opportunities for the provision of DSL

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[52] Opinion and Order, *In the Matter of the application of Ameritech Michigan for approval of cost studies and resolution of disputed issues related to certain UNE offerings*, Case No. U-12540, at 5 (Mich. Pub. Serv. Comm'n Mar. 7, 2001). Initial Appendix, Tab I.

services by Ameritech Michigan's separate affiliate and CLECs," and therefore the Commission chose not to require the unbundling of Project Pronto. Additionally, the Connecticut Department of Public Utility Control ruled against unbundling Project Pronto, stating: "In light of the fact that CLECs have access to the same fiber technology that the Telco uses in Project Pronto, the FCC's definition of line sharing over copper loops, and the Telco's inability to split fiber, the Department therefore finds that parties' request for line sharing over Project Pronto *invalid* and is hereby *rejected.*"[53]

Sprint also conveniently fails to mention that the New York State commission gave Verizon the right to make an "election" of how to facilitate CLEC provision of DSL service over new NGDLCs deployed by Verizon. Specifically, the New York commission gave Verizon the option of allowing line card "collocation" or offering a wholesale broadband service similar to that offered by Ameritech Wisconsin.[54] On rehearing, Verizon informed the commission that it was proceeding with the latter option of a wholesale DSL service for CLECs.[55] The Pennsylvania Commission similarly faced requests for unbundling, and rejected an Administrative Law Judge's recommendation to require Verizon to unbundle its new NGDLCs and permit CLECs to install their own line cards in the RT. Rather, the Pennsylvania Commission adopted Verizon's Best and Final Offer on the issue of line sharing over fiber – its

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[53] Draft Decision, *Application of the Southern New England Telephone Company for a Tariff to introduce Unbundle Network Elements,* Docket No. 00-50-60 at 21 (Conn. Dept. of Pub. Util. Control, Feb. 28, 2001) (emphasis added). Reply Appendix, Tab E.

[54] Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities, *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, Case 00-C-0127, Opinion 00-12, at 25-26 (N.Y. Pub. Serv. Comm'n Oct. 31, 2000). Reply Appendix, Tab F.

[55] *Id.*, Order Granting Clarification, Granting Reconsideration in Part and Denying Reconsideration in Part, and Adopting Schedule, 2001 N.Y. PUC LEXIS 81, at *20 (N.Y. Pub. Serv. Comm'n Jan. 29, 2001).

commitment to make subloops available and to participate in further negotiations regarding other possible approaches.[56] The Pennsylvania Commission, finding that "[t]he technical aspects of the issues presented by the parties in this area remain unclear" and that "technology developments in this area are occurring at a rapid pace," declined to resolve matters on its own, but rather decided that "it appears that a technical conference relating to this issue would be appropriate."[57]

As Ameritech Wisconsin explained in its Initial Brief (at 156-157) and further explains herein, the Michigan, Connecticut, New York and Pennsylvania Commissions' decisions clearly are more in keeping with the pro-investment, pro-competitive goals of the 1996 Act.

II. PROJECT PRONTO CANNOT BE UNBUNDLED BECAUSE THE FCC'S FOUR CRITERIA FOR UNBUNDLING PACKET SWITCHING HAVE NOT BEEN SATISFIED.

As Ameritech Wisconsin explained in its Initial Brief (at 166-72), the FCC has addressed the issue of whether packet switching should be unbundled and found that incumbent LECs are not required to unbundle packet switching except where four specific conditions exist. 47 C.F.R. ¶ 51.319(c)(3)(B). The FCC has found, and the CLECs concede (Tr. Vol. 8 at 2723, 2733-2734, 2762, 3249-3253), that the NGDLC, fiber transport, and OCD facilities that Ameritech Wisconsin plans to deploy with Project Pronto perform packet switching functions.[58] The

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[56] Opinion and Order, *Petition of Covad Communications Company for an Arbitration Award Against Bell Atlantic-Pennsylvania, Inc., Implementing the Line Sharing Unbundled Network Element, Petition of Rhythms Links, Inc., for an Expedited Arbitration Award Implementing Line Sharing,* Dockets No. A-310696F0002 and No. A-310698F0002, at 18-19 (Penn. Pub. Util. Comm'n Nov. 15, 2000). Reply Appendix, Tab G.

[57] *Id.*

[58] "The Broadband Service Offering personifies the packet switching capability." Tr. Vol. 8 at 2737 (Idoux). "It is true that the Project Pronto architecture will encompass some number of packet switching elements." Tr. Vol. 8 at 3399 (Starkey).

CLECs incorrectly assert that the four conditions of FCC rule 319 have been met and, therefore, the Commission should unbundle the Project Pronto architecture. Alternatively, the CLECs assert that, even if one or more of the packet switching criteria are not met at a particular location (which the record establishes to be the case), the Commission has authority to unbundle the Project Pronto architecture.[59] The CLECs are wrong on both counts.

As Ameritech Wisconsin explained in its Initial Brief (at 166-72) and further explains below, the CLECs have failed to establish that any of the conditions listed in the FCC packet switching rule are satisfied for any location in Ameritech Wisconsin's network today. Moreover, even if the CLECs could establish that this particular confluence of conditions did exist *somewhere* in Ameritech Wisconsin's network, there is absolutely no evidence that it exists at a location where a CLEC has asked for unbundled packet switching or at any location actually containing Project Pronto DSL facilities. Tr. Vol. 4 at 1101-02. Given that these four conditions have not been met, the Commission cannot require Ameritech Wisconsin to "unbundle" NGDLC line cards or other components of its planned packet-switched Project Pronto DSL architecture. Indeed, where the FCC has spoken on whether or not a particular element satisfies the unbundling standard, its pronouncement is binding on State commissions. *IUB II,* 525 U.S. at 378 n.6; *UNE Remand Order,* ¶ 154.

D. The FCC's Four Criteria For Unbundling Packet Switching Are Not Satisfied.

1. Condition 1: The incumbent *LEC* has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system *in which fiber optic facilities replace copper facilities in the distribution section* (e.g., end office to remote terminal, pedestal or environmentally controlled vault).

[59] The CLECs repeatedly cite the Illinois Commerce Commission's Decision in Docket No. 00-0393. As stated previously, that decision has no binding legal authority in this state and, even if it did, that decision is currently under reconsideration by the Illinois Commission. Accordingly, the CLECs reference to that decision is inapposite.

Sprint incorrectly asserts that the first condition can be met if DLCs are present anywhere in Ameritech Wisconsin's network, even where the DLCs *do not replace* copper. Specifically, Sprint claims that use of the disjunctive "or" indicates that the "first criteria only requires the presence of DLCs and not the replacement of copper." Sprint Br. at 40. Sprint misreads Condition 1. The disjunctive "or" was used to distinguish between DLC and "any other system." The phrase "in which fiber optic facilities replace copper facilities in the distribution section" clearly was meant to modify both DLC and "any other system." Accordingly, the question under this condition is *not* whether the ILEC has deployed a digital loop carrier system *anywhere* in its network, as Sprint suggest. Rather, the FCC's first condition requires that the DLC system (or "other system") deployed by the incumbent contains "fiber optic facilities [that] *replace* copper facilities in the distribution section." Any other interpretation of Condition 1 simply does not make sense.

Alternatively, Sprint argues that, even if Condition 1 requires the replacement of copper by fiber optic facilities, Ameritech Wisconsin witness Ms. Flatt "freely admits that fiber will replace a substantial portion of the copper feeder loop plant." Sprint Br. at 40-41. Sprint completely mischaracterizes Ms. Flatt's testimony. Even a cursory review of Exhibit 32 and Volume 4, page 1185 of the transcript (which Sprint cites as support for its ludicrous assertion) confirms that Ms. Flatt was talking about the *addition of new facilities* into the network, not the replacement of *existing copper facilities.* Similarly, Exhibit 32 indicates that fiber will substantially eliminate further *deployment* of copper facilities – not that it will replace copper facilities that are already in place, which is the relevant inquiry under Condition 1. The record establishes that Project Pronto is an *overlay* network that would *not* replace *any* existing copper

distribution facilities. *Project Pronto Order,* ¶ 4. In fact, the deployment of Project Pronto would usually free up working copper loops for future CLEC use.

For these reasons, the first condition has not been and cannot be met. Tr. Vol. 4 at 1101.

2. Condition 2: There are *no* spare copper loops capable of supporting the x*DSL* services the requesting carrier seeks to offer.

In support of its assertion that the second condition has been met, Sprint claims that, because Project Pronto is being deployed to overcome loop length issues, the "logical corollary" is that the existing copper loop network is not available to provide DSL services. Sprint Br. at 41. There is no record support for this conclusion. In fact, even Sprint backs down from this overbroad assertion, admitting that "an individual copper loop may be available at a specific customer location." Sprint Br. at 42. Sprint nevertheless urges the Commission "not [to] analyze copper loop availability customer by customer." Sprint Br. at 42. According to Sprint's flawed logic, if spare cooper loops are not available at one location in an ILEC's network, then the ILEC should be required to unbundle packet switching everywhere in its network. This clearly is not what the FCC said. Condition 2 requires a case by case analysis of whether or not copper loops actually are available in a specific instance where a CLEC seeks to provide xDSL service. It is only where "no spare copper facilities are available" at a specific location that a CLEC's ability to provide xDSL service might be impaired.[60]

In short, Sprint fails to proffer evidence of a single, concrete instance where a CLEC's ability to provide xDSL service was inhibited due to the lack of spare copper facility. Accordingly, the second condition has not been and cannot be met.

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[60] Sprint asserts that the FCC could not have intended a case by case analysis of whether a spare copper loop was available, because CLECs would spend time litigating the issue before State commissions. Sprint Br. at 42. This simply does not make sense, because there would be nothing for the parties to litigate – either there is a spare cooper loop or there isn't.

3. **Condition 3: The incumbent LEC *has not permitted* a requesting carrier to deploy a *Digital Subscriber Line Access Multiplexer* in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b).**

The CLECs assert that the third condition has been met because Ameritech Wisconsin does not allow CLECs to "collocate" line cards in Ameritech Wisconsin NGDLCs. Sprint Br. at 43. It cannot be disputed that the FCC's rule refers to the collocation of DSLAMs, not line cards. The CLECs nevertheless claim that the line card should be treated as a DSLAM for purposes of Condition 3, because a line card "serves as the functional equivalent of a DSLAM." Sprint Br. at 43. The CLECs are wrong, and their attempt to rewrite the FCC's third condition to apply to line cards in addition to DSLAMs should be rejected.

As the record establishes, and as the CLECs' own witnesses concede, a DSLAM and a line card are completely different things; they are not one and the same. Tr. Vol. 4 at 1149-50; Tr. Vol. 8. at 2797-802. Unlike a DSLAM, a line card does not have independent functionality. Moreover, even when an ADLU line card is installed as part of an NGDLC, it cannot by itself perform the DSLAM functions that the FCC describes in paragraph 303 of the *UNE Remand Order*. In that paragraph, the FCC stated that a DSLAM:

> combines: (1) the ability to terminate copper customer loops (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); (2) the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; (3) the ability to extract data units from the data channels on the loops; and (4) the ability to combine data units from multiple loops onto one or more trunks that connect to a packet switch or packet switches.

The line card does none of these things.[61] Another clear indication that a line card cannot be magically transformed into a DSLAM for purposes of Condition 3 is the fact that the FCC has

[61] To the contrary, an installed ADLU card merely splits an end-user's traffic into data and voice signals, converts the data signal from analog to digital, and routes both signals to other components of the NGDLC. *Project Pronto Order*, ¶ 4, n.11.

not required an ILEC to permit NGDLC line card "collocation," even though ILECs are required to permit DSLAM collocation.[62] Given these facts, the Commission cannot properly assume that line card collocation somehow qualifies as DSLAM collocation and then, through bootstrap logic, use that incorrect assumption to rewrite the FCC's packet switching rule.

The CLECs also assert that Condition 3 is met because the FCC purportedly has acknowledged that collocating DSLAM equipment at the RT may be costly and time consuming. The CLECs' argument completely misses the point. Sprint Br. at 43-44. The FCC already considered the potential costs and delays of DSLAM collocation as an alternative to unbundled packet switching when it held that such unbundling could *not* be ordered except in the very limited situations that the FCC identified. In other words, the FCC's packet switching rule already takes those factors into account, and that rule provides that an ILEC does not have to unbundle packet switching unless it refuses to permit the collocation of a DSLAM at an RT and the three other conditions are met as well. *UNE Remand Order,* ¶¶ 309, 313. Accordingly, the only permissible question under the FCC's rule is whether the ILEC refuses to allow CLECs to collocate DSLAMs at an RT. The fact that Ameritech Wisconsin allows such collocation ends the analysis. Tr. Vol. 4 at 1101-02. And, the fact that a particular CLEC may believe that DSLAM collocation is expensive, time consuming or somehow economically unattractive, or may choose not to deploy DSLAMs at remote terminals, is entirely irrelevant to the FCC's third condition. Neither the CLECs nor the PSCW can rewrite the FCC's rule to require unbundling whenever a particular CLEC claims that collocation of a DSLAM at an RT is undesirable in terms of cost or timing.

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[62] Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, at ¶ 57 (rel. Jan. 19, 2001) ("*Third Advanced Services FNPRM*").

For this same reason, the Commission must reject the CLECs' assertion that RT collocation may not always be available to CLECs. There is no evidence (or even a claim) of such a denial of collocation in a specific instance in this case. To the contrary, it is undisputed that Ameritech Wisconsin has committed to allow such DSLAM collocation at *all* of its existing RTs and has committed to allow such collocation in future RTs. Tr. Vol. 4 at 1101-02. Ameritech Wisconsin's voluntary commitments contained in the FCC's *Project Pronto Order* provide CLECs with enhanced opportunities to obtain equipment space at or near NGDLC RT sites. Tr. Vol. 4 at 1152. Indeed, under the *Project Pronto Order*, Ameritech Wisconsin will, upon a CLEC's request, either increase the size of existing and future RT structures to enable CLEC DSLAM collocation or provide the CLEC with an adjacent cabinet structure. *Project Pronto Order*, ¶¶ 34, 35, 61, and App. A at 38-39. In any event, even if the CLECs could establish that DSLAM collocation were unavailable at an RT *somewhere* in Ameritech Wisconsin's network, the CLECs have provide no evidence that it exists at a location where a CLEC has asked for unbundled packet switching or at any location actually containing Project Pronto DSL facilities. Tr. Vol. 4 at 1101-02.

For the above reasons, the third condition has not been and cannot be met.

4. Condition 4: The incumbent LEC has deployed packet switching capability *for its own use.*

The CLECs assert that the fourth condition has been met because SBC and Ameritech Wisconsin stand to financially benefit from the deployment of Project Pronto. Sprint Br. at 44-45. The CLECs' interpretation of Condition 4 is illogical and renders it totally meaningless. As a matter of logic, neither SBC nor any other telecommunications carrier would deploy facilities if there were no financial benefit to derive from doing so. Accordingly, under the CLECs interpretation of Condition 4, that condition would be met every time an ILEC deploys packet

switching capability. Clearly, this is not what the FCC said. The plain language of Condition 4 asks whether the "incumbent LEC has deployed packet switching capability for its own use." The unrefuted evidence establishes that Ameritech Wisconsin *will not use* the packet switching equipment deployed with Project Pronto, because it does not provide retail DSL services. Rather, the DSL-related Project Pronto facilities that Ameritech Wisconsin plans to deploy will be *used exclusively by CLECs*, including Ameritech Wisconsin's data affiliate, in provisioning their own retail DSL services to end-users. Tr. Vol. 4 at 1102.

The CLECs nevertheless suggest that the D.C. Circuit's decision in *ASCENT v. FCC*, No. 99-1411 (D.C. Cir.) (Jan. 9, 2001), and the fact that AADS, like other CLECs, will be eligible to purchase Ameritech Wisconsin's proposed Broadband Service, somehow establish that Condition 4 has been met. Again, the CLECs are wrong. As a preliminary matter, the fact that AADS will be eligible to purchase the Broadband Service says nothing about whether Condition 4 has been met. Indeed, Condition 4 asks whether the "incumbent LEC" has deployed facilities for "its" own use – not whether its affiliate would purchase a wholesale Broadband Service.

The CLECs' suggestion that the *ASCENT* decision somehow makes AADS and Ameritech Wisconsin one and the same for purposes of Condition 4 is flat wrong. The *ASCENT* decision dealt only with the narrow issue of whether ASI, an SBC affiliate created pursuant to the conditions of the FCC's Merger Order, was a "successor or assign" of an incumbent LEC for purposes of section 251(c)(3) of the Act. Although the D.C. Circuit found that the FCC erred in concluding that ASI would not be a "successor or assign" of the SBC ILECs that transferred assets to ASI, this does not mean that AADS is necessarily a "successor or assign" of Ameritech Wisconsin. Unlike ASI, AADS was not created pursuant to the FCC's Merger Order. In fact,

AADS was created in 1993 and, therefore, its creation predates not only the Merger Order but the 1996 Act itself.

Even if *ASCENT v. FCC* could be read to hold that AADS is a "successor or assign" of Ameritech Wisconsin and therefore subject to the FCC's packet switching rule (which it cannot), the case is irrelevant for at least three reasons. *First*, this proceeding does not involve AADS. *Second*, the FCC's packet switching rule requires that "[e]ach of the . . . conditions" be satisfied before unbundling can be required and, as explained above, the evidence establishes that the first three conditions do not exist today. *Third*, an ILEC can be required to unbundle network elements only if the "necessary" and "impair" standards of section 251(d)(2) are met. As explained in Part IV below, these tests have not been met.

In further support of their argument that Condition 4 has been met, the CLECs assert that "Ameritech will use the packet switching capability encompassed in the DSLAM functionality of the line cards for itself to forward the voice channels to its circuit switch." Sprint Br. at 44. The CLECs again are wrong. Digitizing and packetizing data signals into "cells" is a packet switching function. Ameritech Wisconsin would not use such functionality for any retail services that it provides. Indeed, even when the NGDLC RT provides the ADSL and the POTS to an end user over the same copper pair to the end user's premises, the POTS does not use any packet switching functionality in the NGDLC. Specifically, the POTS signal enters the ADLU line card (which, as explained above, is *not* a DSLAM), passes through the splitter (which is not packet switching equipment), and is carried to the POTS only equipment in the NGDLC RT. The POTS signal is not, and technically cannot be, touched by any packet switching functionality within the NGDLC RT, or it would no longer be a POTS signal. Tr. Vol. 4 at 1153.

For the above reasons, the fourth condition has not been and cannot be met.

E. Where The Four Conditions Of Rule 319 Have Not Been Met, The Commission Does Not Have Authority To Order The Unbundling Of The Project Pronto Packet Switching Network.

The CLECs assert that, even if the Commission finds that one or more of the FCC's packet switching criteria are not met, the Commission somehow has independent authority to unbundle the Project Pronto packet switching network elements, so long as it finds that the "impair" test of section 251(d)(2) is satisfied. Sprint Br. at 45-46. The CLECs are wrong.

A State commission's authority to create new "UNEs" is limited by federal law in several respects. *First*, section 261(c) of the 1996 Act limits a state's authority to impose additional requirements on telecommunications carriers to instances where such a requirement is "necessary" to promote competition and is "not inconsistent with . . . the [FCC's] regulations."[63] Thus, to the extent that the FCC has already addressed a particular issue in establishing its unbundling rules, the FCC's conclusion on that issue is controlling, and State commission actions that are inconsistent with the FCC's conclusion are preempted. *Second,* even if a State commission unbundling proposal is not inconsistent with the FCC's unbundling rules, a State commission can create new unbundling obligations only if it establishes that those obligations are "necessary" to promote competition and if it conducts all of the analyses required by section 251(d)(2) and Rule 317 – the "necessary" and "impair" tests. See 47 C.F.R. § 51.317(b)(4). The important point for the Commission to keep in mind is that the tests under sections 261(c) and 251(d)(2) are not mutually exclusive tests. In other words, before imposing any new unbundling obligations, the State commission must conduct a two step analysis establishing that such obligations (1) are necessary to promote competition and are not inconsistent with FCC rules, as

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[63] Section 261(c) also requires that any state unbundling requirement be "necessary to further competition." As Ameritech Wisconsin explained in its Initial Brief (at pp. 202-03), this requirement has not been met.

required by section 261(c), *and* (2) meet the "necessary" and "impair" test of section 251(d)(2). Passing one test or the other is insufficient.

The CLECs' proposal that, even if the four conditions of the FCC Rule 319 have not been met, the Commission can somehow unbundle the components of the Project Pronto packet-switched DSL architecture, is unlawful because it would require the Commission to ignore (and violate) section 261(c) and FCC Rule 319, and apply a completely different unbundling standard to Ameritech Wisconsin's Project Pronto DSL network. As explained above, under section 261(c), the Commission is bound by the FCC's unbundling standards under Rules 317 and 319.[64] By carefully defining the circumstances that must exist before packet switching functionality must be unbundled, the FCC held that if those conditions do *not* exist – and there is no evidence here that they do in this case – then the incumbent LEC *cannot* be required to unbundle packet switching functionality.[65] Where the FCC has spoken on an unbundling issue by making an "affirmative finding as to whether or not the particular element now satisfies the unbundling standards of the Act" (*UNE Remand Order*, ¶ 157), its pronouncements "draw the lines to which [State commissions] must hew."[66] Consistent with the FCC's rule on packet switching, this Commission must reject the CLECs' Project Pronto unbundling proposal.

The CLECs nevertheless assert that the *UNE Remand Order* somehow authorizes State commissions to ignore the four conditions of FCC rule 319. In support of their position, the CLECs selectively quote from the following paragraph:

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[64] *See* 47 C.F.R. § 51.317(b)(4); 47 U.S.C. § 261(c); *UNE Remand Order*, ¶ 157.

[65] *See UNE Remand Order*, ¶ 157; *IUB II*, 525 U.S. at 388-92 (where unbundling standards of section 251(d)(2) were not properly applied, unbundling requirements were invalid).

[66] *IUB II*, 525 U.S. at 378 n.6 (State commissions must regulate "in accordance with federal policy"); *UNE Remand Order*, ¶ 154 (state-imposed unbundling duties must "meet the requirements of section 251 and the national policy framework instituted in this Order").

> 312. We reject e.spire/Intermedia's request for packet switching or frame relay unbundled network element. First, as discussed above, we will define unbundled network elements, to the extent practicable, in a technologically neutral manner so as to not favor one particular packet switching technology over another. Defining an unbundled network element according to a particular packet switching technology, such as frame relay, violates this principle of technological neutrality. Further, defining packet switching element according to a specific technology creates the possibility that as innovative packet switching technologies are deployed, they may or may not fall within our definition of packet switching. Second, e.spire/Intermedia have not provided any specific information to support a finding that requesting carriers are impaired without access to unbundled frame relay. We note, however, that e.spire/Intermedia are free to demonstrate to a State commission that lack of unbundled access to the incumbent's frame relay network element impairs their ability to provide the services they seek to offer. A State commission is empowered to require incumbent LECs to unbundle specific network elements used to provide frame relay service, *consistent with the principles set forth in this order.*

UNE Remand Order, § 312. (Emphasis added.)

As the full text of this paragraph indicates, the FCC was analyzing a specific unbundling request by e.spire/Intermedia for frame relay (a type of packet switching technology) and found that e.spire/Intermedia had not provided specific factual information to support their unbundling proposal. Although adequate support was not provided to the FCC for it to find that this particular packet switching technology could be unbundled, the FCC stated that e.spire/Intermedia was not precluded from gathering such information and presenting it to a State commission. This, however, does not mean that the State commission could order such unbundling in instances where the four conditions of Rule 319 have not been met. The critical phrase in paragraph 312, which the CLECs entirely ignore, is the last one: "consistent with the principles set forth in this order" – which principles, of course, include the four conditions of rule 319. Simply put, paragraph 312 of the *UNE Remand Order* does not give State commission carte blanche to ignore the four conditions of Rule 319, but merely re-emphasizes that any

requirement to unbundle packet switching must be "consistent with [those] principles" set forth in Rule 319.

In sum, the Commission cannot ignore the requirements of section 261(c) and FCC Rule 319, by attempting to unbundle packet switching in circumstances where the FCC has specifically stated that ILECs cannot be required to unbundle it. Rather, any state unbundling obligations must meet the standards of *both* section 261(c) and 251(d)(2).

F. The CLECs' Claim That Ameritech Wisconsin May Build An All-Packet Switching Network Has No Factual Basis And Is Irrelevant.

In further support of their position that the Commission should unbundle the Project Pronto packet switching network, the CLECs make the irrelevant assertion that Ameritech Wisconsin (at some unspecified time in the future) somehow will turn its entire network into an all-packet switching network, and then refuse to provide any part of that network to CLECs as UNEs, thereby monopolizing both voice and data service markets. Specifically, the CLECs state:

> Besides freezing out CLECs that provide advanced services, this case has potentially life-threatening implications for all CLECs that lease UNEs from Ameritech to provide voice services. The explanation is simple. Ameritech testified that a network element that contains packet switching is unavailable to CLECs on a UNE basis. Also Ameritech confirms that it is replacing its current voice tandem switches with packet switches and will switch voice using ATM technology (VOATM). Packet switching is the network of the future for both data and voice. The Commission must reinforce its commitment to develop competition and find that packet switching must be available to CLECs on an unbundled basis. Otherwise, advanced services competition will never develop and then eventually voice local competition will die as Ameritech continues to upgrade its network.

Sprint Br. at 7-8. To say the CLECs' "Chicken Little" assertion is far fetched is an understatement.

Among other things, Ameritech Wisconsin has never stated that every network element that provides packet switching is unavailable to CLECs on a UNE basis. In fact, such a position would be contrary to FCC Rule 319. Consistent with FCC Rule 319, Ameritech Wisconsin always has acknowledged that packet switching functionality must be unbundled if the four conditions of that FCC rule are met (which they are not met here). Moreover, despite the CLECs' assertion to the contrary, there is no evidence that Ameritech Wisconsin somehow is turning or will turn its entire network into an all-packet switching network. To the contrary, Project Pronto is an overlay network that leaves existing copper loops and voice circuit switches in place.

Putting aside the complete lack of evidentiary support for the CLECs' claim, the CLECs' characterization of what would happen if Ameritech Wisconsin were to create an all-packet switching voice and data network is simply wrong. Indeed, if the farfetched circumstances that the CLECs purportedly fear actually did come into existence, it is highly likely that the criteria of the FCC's packet switching rule would be met and Ameritech Wisconsin would be required to unbundle elements of that packet switching network. It is also possible that, under such circumstances, the FCC would amend its packet switching rule. In any event, this Commission cannot and should not make an unbundling decision based on a network that the CLECs' fear might come into existence at some undefined point in the distant future. Rather, as Ameritech Wisconsin explained in its Initial Brief (at 178-81), any determination about whether the Project Pronto architecture should be unbundled must be based on Ameritech Wisconsin's existing network.

III. IT IS NOT TECHNICALLY OR ECONOMICALLY FEASIBLE TO UNBUNDLE PROJECT PRONTO AND PERMIT THE "COLLOCATION" OF CLEC LINE CARDS IN AMERITECH WISCONSIN'S NGDLCS.

As a starting point, the Commission must recognize that the governing legal test for unbundling network elements is not whether such unbundling is "technically feasible." Rather, the first, and most important, test is whether such unbundling satisfies the requirements of section 251(d)(2) of the Act. As the Supreme Court has held:

> Section 251(d)(2) does not authorize the Commission to create isolated exemptions from some underlying duty to make all network elements available. It requires the Commission to determine on a rational basis which network elements must be made available, taking into account the objectives of the Act and giving some substance to the 'necessary' and 'impair' requirements.

IUB II, 525 U.S. at 392. And for any unbundling requirements that go beyond those established by the FCC, the CLECs must also satisfy the requirements of section 261(c) of the Act. As Ameritech Wisconsin explained in its Initial Brief, the CLECs have failed to satisfy section 251(d)(2), as well as section 261(c), of the Federal Act. Accordingly, the Commission does not even need to reach the "technical feasibility" issue. But if it decides to do so, CLECs' proposals are sorely wanting in that respect as well.

The CLECs predictably assert that it is technically and economically feasible to "unbundle" the Project Pronto DSL network and permit the "collocation" of CLEC line cards in Ameritech Wisconsin's NGDLCs. However, in lieu of actually analyzing the technical limitations of the planned Project Pronto DSL network architecture and the economic implications of their proposals, the CLECs posit unsupported assertions that, even if true, would not establish that it is technically or economically feasible to unbundle Project Pronto. As Ameritech Wisconsin explained in its Initial Brief (at 172-77, 218-27) and further explains below, the record establishes that the CLECs' so called "unbundling" and "collocation" proposals are not technically or economically feasible.

A. It Is Not Technically Feasible To Unbundle Project Pronto

1. Ameritech Wisconsin Has Never Stated That It Is Technically Feasible To Unbundle Project Pronto.

The CLECs argue that it is technically feasible to unbundle Project Pronto because "Ameritech concedes that it is technically feasible for a CLEC to use the Project Pronto architecture on an unbundled basis." Sprint Br. at 2-3. Ameritech Wisconsin, of course, has never made such a concession. To the contrary, throughout this proceeding Ameritech Wisconsin has explained that it is not technically or economically feasible to unbundle the Project Pronto architecture or permit the "collocation" of CLEC line cards in Ameritech Wisconsin's NGDLCs.

In support of their assertion that Ameritech "concedes" it is technically feasible to unbundle Project Pronto, Sprint (at 3) cites the cross examination of Ms. Flatt at page 1212 of the transcript, which reads:

> Q. Is it not feasible for a CLEC to give SBC Ameritech a line card that SBC Ameritech has told the CLEC works with its NGDLC equipment and for a CLEC to service customers in that manner?
>
> A. Well, No. 1, like you said, it's based on compatibility, you know, if the NGDLC line card –
>
> Q. It's a simple yes or no question. Is it technically feasible or not?
>
> A. It's not a simple yes or no question in my opinion. My opinion is that there are several factors to be considered in that. If the line card were compatible, if it were an Alcatel line card, it were compatible with our equipment. And depending on exactly how you wanted to use it, there are a lot of variables there. But there is still going to be lots of capacity in that card going to waste no matter – if you own that card and you don't fully utilize that card.
>
> Q. Hey, I've got a lot of customers, I'm going to fully utilize that card.
>
> A. Okay.
>
> Q. So it's technically feasible, right, given the qualifications that you made in your answer?
>
> A. Sure.

Sprint's assertion that this is a "concession" that it is technical feasible to unbundle Project Pronto is a complete mischaracterization of Ms. Flatt's testimony, and obviously takes the last two sentences of the above dialogue completely out of context. Indeed, the cited portion of Ms. Flatt's testimony does not address "unbundling" of Project Pronto at all; it addresses the CLECs' companion "line card collocation" proposal, in a "what if elephants could fly" hypothetical scenario. Ms. Flatt did not even concede that such "collocation" was technically feasible. Sprint blatantly ignores the qualifications made by Ms. Flatt in her testimony. Specifically, Ms. Flatt stated that the technical feasibility of line card collocation would depend on "several factors," including "if it were an Alcatel line card" and if "it were compatible with [Ameritech Wisconsin's] equipment," and "exactly how [the CLEC] wanted to use it." Tr. Vol. 4 at 1211-1212. As explained below, these are not insignificant qualifications.

The record establishes that line cards from non-Alcatel NGDLCs almost certainly would not physically fit into the Alcatel equipment and, even if the line card could be physically plugged into the back plane, it would not inter-operate with the system and element management software.[67] In fact, the types of line cards chosen by the CLECs could seriously harm the quality of the DSL service being provided to other CLECs' end users, and could seriously reduce the usable capacity of the NGDLC systems. Tr. Vol. 4 at 1164, 1211-1212. The only way that non-Alcatel line cards possibly could work in Ameritech Wisconsin's NGDLC (assuming such cards physically could fit into the system) is if Ameritech Wisconsin deployed a new, compatible version of the overall software that runs the entire NGDLC system, and did so on an RT-by-RT

[67] Alcatel 10/12/00 FCC comments at 3, 15-16, 19, 28. Initial Appendix, Tab E. 5/10/00 FCC Forum at 127, 137. Initial Appendix, Tab F.

basis.[68] Tr. Vol. 4 at 1161, 1164. This would be both technically and economically impracticable, if not impossible, because Ameritech Wisconsin would have to somehow deploy software compatible with every possible line card chosen by every CLEC – as well as any new type of line card that may be developed in the future.

Significantly, operational and network-related problems would not go away even if CLECs were limited to "collocating" Alcatel line cards. Specifically, even when Alcatel-supported cards are installed, service is not available until the software controlled configuration and provisioning functions are completed. Additionally, in the case of Alcatel's Litespan products, the software can only be accessed by the system owner, subject to the manufacturer's licensing terms and warranty provisions. Alcatel 10/12/00 FCC Comments at 19. Initial Appendix, Tab E.

Even if CLECs were to use only Alcatel line cards that were completely compatible with Ameritech Wisconsin's NGDLC system, the manner in which CLECs want to use line cards would affect their compatibility with Ameritech Wisconsin's NGDLC system. The record establishes that CLECs seek to use line cards in a manner that is *not* compatible with Ameritech Wisconsin's NGDLC system. Among other things, Sprint states (Sprint Br. at 47) that CLECs want to own line cards so they can "provide individualized services that differ from Ameritech's unspecified bit rate Broadband Service Offering," such as services that utilize CBR and VBR QoS classes. As Ameritech Wisconsin explained in its Initial Brief (at 223-25), using line cards in this manner would not be compatible with Ameritech Wisconsin's NGDLC system. The Project Pronto DSL network architecture only supports UBR and a limited version of CBR QoS

[68] Significantly, Alcatel, which controls the intellectual property rights to the NGDLC facilities, would be the only party that could develop such software. Alcatel obviously has not done so, and has no plans to do so.

classes and, therefore, cannot support many of the QoS classes that the CLECs seek to introduce into the network.[69] Tr. Vol. 4 at 1164-68. In short, Sprint's assertion that "unbundling [Project Pronto] is technically feasible if CLECs give Ameritech plug-in cards sanctioned by Ameritech's vendor," simply is not true.

In any event, even assuming that CLEC-owned line cards would be completely compatible with Ameritech Wisconsin's system, that says nothing about whether it is technically feasible to unbundle the numerous Project Pronto "UNEs" proposed by the CLECs. To the contrary, the record establishes that it is not technically feasible to unbundle the "UNEs" proposed by the CLECs. The Project Pronto facilities between the end-user's premises and the central office are *shared facilities* that cannot be unbundled for a CLEC's dedicated use in the manner that the FCC has unbundled other network elements. Tr. Vol. 1 at 106. It also is not physically possible to unbundle the constituent components of the Project Pronto DSL architecture, because of the manner in which the components of the underlying network architecture interact and work with one another. Each component of the Project Pronto DSL network architecture is needed to provide DSL service and, if any component of that architecture were missing, it would be impossible to offer DSL service. Tr. Vol. 4 at 1095-99, 1140-42.

With respect to the specific "UNEs" proposed by the CLECs, it is significant that many of the proposed "UNEs" fail to even meet the prerequisite that they actually be *existing elements* in Ameritech Wisconsin's network, because they currently are not part of Ameritech Wisconsin's network (because the Project Pronto DSL "network" does not yet exist). More importantly, many of the proposed UNEs would require construction of new facilities that are

[69] For example, the Project Pronto network architecture currently cannot support permanent virtual circuits and permanent virtual paths at all ATM QoS classes, such as unlimited CBR, VBR-RT and VBR-NRT. Tr. Vol. 4 at 1165-68.

not even part of the *planned* Project Pronto DSL network, including, the CLECs' requests that Ameritech Wisconsin be required to (1) transport data signals over TDM Circuits; (2) provide PVCs and PVPs in any QoS Class; (3) provide unbundled copper subloops from the RT to the customer premise and to the SAI; and (4) provide unbundled so-called lit fiber "subloops" between the RT and the OCD consisting of one or more PVPs and/or one or more PVCs. *See* AW Br. at 174-77; Tr. Vol. 1 at 109, 130, 312-15; Tr. Vol. 4 at 1098, 1165-69. Accordingly, even if the Project Pronto DSL "network" were in existence, it would not be technically feasible to provide many of the CLECs' proposed "UNEs" using that actual network.

2. The CLECS' Suggestion That They Are Not Asking Ameritech Wisconsin To Unbundle Network Elements That Ameritech Wisconsin Is Not Planning To Deploy And, Therefore, It Is Technically Feasible To Unbundle That Architecture, Is Wrong.

The CLECs also argue that their unbundling proposal is technically feasible because the CLECs purportedly do "not ask Ameritech to unbundle network elements that it is not deploying" in its network. Sprint Br. at 14. Even assuming this statement were true (which it is not), it says nothing about whether it is technically feasible to unbundle the Project Pronto DSL architecture. As explained above, that architecture cannot be unbundled in the manner proposed by the CLECs.

In any event, despite the CLECs' assertion to the contrary, they are requesting that the Commission create several new "UNEs" that would require the purchase and installation of new facilities that Ameritech Wisconsin *does not plan* to deploy in its network. Many of the new "UNEs" requested by the CLECs cannot be supported with the planned Project Pronto architecture, but would require Ameritech Wisconsin to invest additional funds, build or install additional equipment and ultimately redesign the planned Project Pronto DSL architecture in order to provide some of the "UNEs" proposed by the CLECs. *See* Tr. Vol. 1 at 109, 130, 312-

15; Tr. Vol. 4 at 1098, 1165-69. As Ameritech Wisconsin explained in its Initial Brief (at 204-07), any requirement to build additional facilities or deploy something different than what Ameritech Wisconsin plans to deploy with Project Pronto would violate the Eight Circuit's decisions in *IUB I,* 120 F3d at 813, and *IUB III* 219 F3d at 754-59.[70]

Sprint also incorrectly claims that the "CLECs are not asking Ameritech to make line shared DSL services available when it has not built that capacity." Sprint Br. at 3. Again, Sprint is wrong. As Ameritech Wisconsin explained in its Initial Brief (at 218-27), the CLECs' line card "collocation" proposal would prematurely exhaust the slot and port capacity of the NGDLC, because it would permit CLECs to reserve unused ports on each "collocated" line card. Once all the capacity of Ameritech Wisconsin's NGDLC system is reserved and, hence, exhausted (and even though much of that capacity would be unused), Ameritech Wisconsin either would have to invest additional capital to build more capacity or cease filling additional CLEC requests for access to the Project Pronto DSL facilities. Simply put, if the Commission were to adopt the CLECs' line card " collocation" proposal and Ameritech Wisconsin were to go forward with its Project Pronto DSL deployment, Ameritech Wisconsin would have to build additional capacity for its NGDLC systems much sooner than would otherwise be required if such "collocation" were not permitted. Tr. Vol. 1 at 110-19, 132-33; Tr. Vol. 4 at 1164-66.

3. The CLECs' Assertion That Data DSL Signals Follow A Similar Path To The Voice Signals And, Therefore, Should Be Unbundled Is Irrelevant And Wrong.

The CLECs also argue that it is technically feasible to unbundle the Project Pronto architecture because "[t]he data DSL signals that Ameritech asks the Commission to not

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[70] Notably, through its voluntary commitments adopted by the FCC's *Project Pronto Order,* Ameritech Wisconsin has committed to work collaboratively with CLECs to introduce additional capabilities into the Project Pronto network architecture, and thus will evaluate the feasibility of additional features and functions of the Project Pronto architecture. Tr. Vol. 4 at 1168.

unbundle follow a similar path to the voice signals that Ameritech concedes must be unbundled." Specifically, the CLECs asserts that "the voice and data signals traverse virtually the same network equipment on their way to the identical CLEC collocation space" and, therefore, like the voice signals, the data signals can be unbundled. Sprint Br. at 10-11. Again, the CLECs' assertion is factually incorrect and fails to establish that it is technically feasible to unbundle the Project Pronto DSL architecture .

As a preliminary matter, the standard for unbundling is not whether one network element is "similar" to another network element, as the CLECs' argument suggests. Rather, as explained in Parts III and IV below, any state unbundling requirement must meet the requirements of sections 261(c) and 251(d)(2) of the Act, which the CLECs' proposal fails to meet. In any event, the fact that the voice and data transmissions travel over the same copper feeder facilities from the SAI to the back plane of the NGDLC located at the Remote Terminal, and both eventually end up at the CLECs' collocation arrangement, does not prove that the data and voice transmissions from the RT to the CO travel on "similar" facilities, and it certainly does not mean that it is technically possible to unbundle the data transmission facilities. To the contrary, the record establishes that the data and voice transmissions from the RT to the CO travel on very different facilities and, unlike the voice transmission facilities, it is not technically feasible to unbundle the data transmission facilities. Tr. Vol. 1 at 112-13, 313-15; Tr. Vol. 4 at 1090-96, 1108-13.

To be more specific, the voice transmission path from the RT travels over a separate Time Division Multiplexed ("TDM") fiber-optic transport facility (an OC-3) to the CO, where it terminates at a separate Central Office Terminal ("COT"). Tr. Vol. 4 at 1111-13. The data transmission, on the other hand, is digitized and packetized by other hardware and software

within the NGDLC and transported over a packet switched fiber-optic facility (an OC-3c) to the CO. The OC-3c optical signal contains the data signals from numerous end-users, each of which is served by the CLEC of their choice. In other words, the data signals travel on a Permanent Virtual Path ("PVP"), and individual data packets travel on Permanent Virtual Circuits ("PVCs") within that path. Once reaching the central office, the fiber transmission path (and the associated PVP) terminates at the OCD, which is an ATM packet switch. The inbound ports on the OCD receive all of the OC-3c optical signals from all of the Project Pronto RT sites served out of that central office. The OCD provides a packet switching, routing and aggregation function for the data traffic, and directs each end-user's data signal to the appropriate outbound port on the OCD for delivery to that end-user's chosen CLEC's collocation arrangement. Tr. Vol. 1 at 313-15; Tr. Vol. 4 at 1091-92, 1111-13.

The NGDLC equipment at the RT, the fiber transmission path, and the OCD cannot be physically separated from one another, because they are an integrated unit that is "hard wired" together. Tr. Vol. 1 at 313-15; Tr. Vol. 4 at 1091-92, 1111-13. And that integrated system has no accessible "subpoints" capable of handing off, or permitting access to, discrete individual circuits or channels. For this reason, the CLECs' assertion that the data transmission can be unbundled just like the voice transmission is wrong.

G. It Is Not Economically Feasible To Unbundle Project Pronto.

1. The CLECs' Suggestion That It Is Economically Feasible To Unbundle Project Pronto DSL Facilities Because Of The Network Efficiencies SBC Anticipates From Its Deployment Of Project Pronto Is Wrong.

The CLECs also assert that it is economically feasible to unbundle the Project Pronto DSL architecture, because Ameritech Wisconsin "has said many times publicly that the packet switching efficiencies will more than make up for the $6 billion cost of building Project Pronto," and that "SBC claims in its Investor Briefing materials that the 'network efficiency

improvements alone will pay for'" the Project Pronto initiative. Sprint Br. at 3, 8. The CLECs' assertion not only mischaracterizes SBC's statements in the Investor Briefing, but also fails to consider that the efficiencies and savings expected as a result of the *planned* Project Pronto DSL architecture *cannot* make up for the tremendous inefficiencies and costs associated with the CLECs' unbundling/ collocation proposal.

Specifically, SBC and Ameritech Wisconsin have never stated (in its Investor Briefing or anywhere else) that the efficiencies expected from the Project Pronto DSL facilities *alone* would make up for the $6 billion dollar investment. The Project Pronto initiative is far broader than just the DSL facilities at issue in this case. Indeed, Project Pronto includes significant upgrades to the *interoffice* side of Ameritech Wisconsin's and other SBC ILECs' networks, as opposed to the *end-user customer* side of the network (*i.e.*, the facilities running between the ILEC's central office and the end-user customer's premises). It is the *interoffice* network improvements that generate the vast majority of the network maintenance-related savings that SBC hopes to realize from Project Pronto.

More importantly, the October 1999 Investor Briefing represented a snapshot in time in which SBC provided its projections of the future as they existed at that time, based on the information then available to it. SBC never suggested that reality would match its expectations. And even assuming that SBC's prediction of the future were to prove accurate and the savings SBC then anticipated from Project Pronto were to cover SBC's planned original $6 billion investment in Project Pronto, this says nothing about whether it is economically feasible to unbundle Project Pronto or permit the so-called "collocation" of line cards. Indeed, the future saving anticipated in October 1999 were based on the *planned* Project Pronto architecture, not an unbundled network that includes the "collocation" of line cards in Ameritech Wisconsin's

NGDLCs. The CLECs' proposal threatens to alter SBC's planned $6 billion investment into a much larger, economically inefficient investment. Neither SBC nor Ameritech Wisconsin has represented that the anticipated efficiencies of its *planned* Project Pronto architecture as of October 1999 could make up for the increased costs that would result under the CLECs' proposal. To the contrary (and as Ameritech Wisconsin explained in its Initial Brief at pages 172-77, 218-27), it has always been Ameritech Wisconsin's position that the CLECs' proposal would create inefficiencies and added costs,[71] thereby rendering the deployment of Project Pronto DSL-related facilities in Wisconsin economically infeasible.

It also should be noted that the CLECs' line card collocation proposal likely would require Ameritech Wisconsin to deploy a new version of the overall software that runs the entire NGDLC system, including the line cards. This new software would have to be deployed on an RT-by-RT basis, which is both technically and economically impracticable, if not impossible, because Ameritech Wisconsin would have to somehow deploy software compatible with every possible line card chosen by every CLEC – as well as any new type of line card that may be developed in the future. Tr. Vol. 4 at 1161, 1164. The CLECs' line card collocation proposal also would put Ameritech Wisconsin at severe financial risk, because using non-authorized cards in the system would void Ameritech Wisconsin's warranty protection on millions of dollars worth of equipment. As Alcatel has pointed out "[m]ost, if not all warranties on these NGDLC systems would be voided if non-authorized cards were placed in the system."[72] Under these

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[71] The additional facilities Ameritech Wisconsin would be required to deploy under the CLECs' proposal were identified in Ameritech Wisconsin's Initial Brief (at 173-77, 204-07) and are summarized in Part D below.

[72] Alcatel 10/12/00 Comments at 17. Initial Appendix, Tab E.

circumstances, it cannot be said that it is economically feasible to permit the collocation of line cards in Ameritech Wisconsin's NGDLC RTs.

The bottom line is that SBC's projections in October 1999 of future cost savings related to Project Pronto were made with the *planned* Project Pronto architecture in mind, not the CLECs' preferred architecture. The operational problems and inefficiencies associated with the CLECs' proposal would destroy the savings SBC anticipates from its deployment of Project Pronto, and would render Ameritech Wisconsin's planned deployment of Project Pronto DSL-related facilities in Wisconsin economically unviable. The CLECs' proposal would prevent Ameritech Wisconsin from making investment decisions based upon its own business plans, regardless of the financial consequences to Ameritech Wisconsin and its investors, and would require Ameritech Wisconsin to invest additional funds and time to build an inefficient, costly network designed solely to benefit these particular data CLECs. Adoption of the CLECs' proposal not only would eliminate Ameritech Wisconsin's economic basis for investing in DSL-related Project Pronto facilities in Wisconsin, but also would send CLECs the message that they do not have to invest in their own facilities, because they can force ILECs to build their preferred network for them.

2. The CLECs' Assertion That Ameritech Wisconsin's Stranded Capacity Concerns Can Be Resolved By Requiring CLECs To Pay For Any Reserved Capacity Is Wrong.

The CLECs claim that the stranded capacity concerns identified above can be resolved if CLECs are required to pay Ameritech Wisconsin "rates that recover the costs of all of the remote terminal capacity that they use." Sprint Br. at 13. The CLECs' "solution" (that underutilization of the NDGLC capacity is fine so long as the CLECs pay for any reserved, unused capacity) misses the point, because there is no requirement that any CLEC actually purchase any of the so-called Project Pronto "UNEs" that the CLECs seek. Because Ameritech Wisconsin's DSL

architecture will compete in the highly competitive advanced services market, there is no guarantee that any services using the Project Pronto DSL facilities will be able to successfully compete in that market. Underutilizing the port and bandwidth capacity of the NGDLC, and thereby requiring Ameritech Wisconsin to make additional capital investments to deploy additional NGDLC RTs sooner than would otherwise be required, would only unnecessarily burden and inflate the costs associated with use of that DSL architecture for delivering high speed Internet access services. And, the time associated with provisioning and installation of additional (and unnecessary) NGDLC RTs would likely delay the delivery of service to end-user customers.[73] Tr. Vol. 1 at 173; Tr. Vol. 4 at 1155-68, 1207-09.

Obviously, a CLEC should be required to pay for any capacity it "reserves" for its exclusive use. However, this does not prevent premature exhaust of the NGDLC and it does not resolve the economic inefficiency issues surrounding such exhaust in a highly competitive market, which eliminates any assurance that Ameritech Wisconsin could recover any of the increased costs associated with those inefficiencies.

* * *

In summary, the record establishes that it is not technically or economically feasible for Ameritech Wisconsin to provide the numerous "UNEs" proposed by the CLECs or to permit the "collocation" of line cards in Ameritech Wisconsin's NGDLCs. What the CLECs seek is to have Ameritech Wisconsin build a network that would accommodate the CLECs' "wish list," regardless of the adverse effect that the CLECs' "ideal network" would have on advanced

[73] In any event, the CLECs' proposal that they pay for any reserved, yet unused, capacity does not resolve the technical problems associated with such "collocation," nor does it address the fact that Ameritech Wisconsin would have to deploy new software to accommodate the CLECs' request.

services competition and other services provided over Ameritech Wisconsin's network. Accordingly, the Commission should reject the CLECs' proposals.

IV. APPLICATION OF THE IMPAIR STANDARD DICTATES THAT PROJECT PRONTO NOT BE UNBUNDLED.

Even if this Commission could ignore the FCC's Rule on packet switching (which, as explained above, it cannot), the Commission cannot properly order the unbundling of Project Pronto because, as the record establishes, the "impair" standard of section 251(d)(2) has not been, and cannot be, met. *See* AW Br. at 172-201.

In making an unbundling analysis, the Commission must remain mindful of the fact that the CLECs have the burden of proof to establish that each of the UNEs they propose passes the "impair" test of section 251(d)(2) and Rule 317. Indeed, as Ameritech Wisconsin explained in its Initial Brief (at 177-78), the Supreme Court, in *IUB II,* made clear that section 251(d)(2) of the Act – and, correspondingly, FCC Rule 317 – places the burden of proof on the *requesting carrier* to affirmatively establish that each of the proposed new UNEs it seeks satisfies the requirements of section 251(d)(2). *IUB II*, 525 U.S. at 392. The CLECs, however, do not even attempt to apply the "impair" test to any of the specific UNEs they propose. For this reason alone, the Commission should reject the CLECs' "unbundling" and "collocation" proposals.

Rather than applying the impair test to the specific UNEs they propose, the CLECs merely list those "UNEs" that they seek and then engage in an analysis that, at best, is directed at "Project Pronto" as a whole. Even to this extent, the CLECs' proposal falls far short of meeting the "impair" standard. To be more specific, the "impair" standard requires a showing that "lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer." *UNE Remand Order,* ¶ 51. While the CLECs set forth this standard, their analysis never once focuses on whether their current ability to provide DSL service will be

diminished in any way by the deployment of Project Pronto. Indeed, the CLECs do not claim that, absent unbundling Project Pronto, there would be *fewer* alternatives for providing DSL service, nor do they claim that they would not be able to provide DSL service in the absence of unbundling Project Pronto. Tr. Vol. 9 at 3391-92. And, the CLECs could not support such claims even if they tried, because Project Pronto does not restrict the CLECs' current options for providing advanced services, but through the wholesale Broadband Service, provides an additional option for providing such services.

Instead of focusing on whether lack of access to an unbundled Project Pronto DSL architecture diminishes their ability to provide DSL service, as required by the Act, the CLECs simply declare that the "impair" standard has been met, because the methods by which they have been providing DSL service (self-provisioning, or leasing home run copper loops (or the HFPL of those loops) and collocating a central office-based DSLAM, or leasing unbundled copper subloops (or the HFPL of those subloops) and collocating a remotely-located DSLAM) purportedly are inferior to providing DSL service via an unbundled Project Pronto DSL architecture. The impair standard, however, does not turn on the subjective preferences of a few CLECs that don't like the other available options for providing DSL service. Rather, as Ameritech Wisconsin explained in its Initial Brief (at 179, 184), the impair analysis is an *objective* test that requires consideration of the "totality of the circumstances" and market conditions as they *exist today,* considering all potential sources of supply. *UNE Remand Order,* ¶ 62. The CLECs' so-called "impair" analysis fails to follow these principles. Indeed, the CLECs have not provided any objective, quantifiable evidence to support their unbundling request, nor have they considered the "totality of the circumstances" or market conditions as they exist today. Rather, the CLECs encourage the Commission to ignore the current methods by

which CLECs provide DSL service, and engage in speculation about *future* market conditions and what *might* happen in the distant future.

The Commission is not free to ignore viable alternatives to unbundling the Project Pronto DSL architecture – alternatives that the CLECs currently use and can continue to use after the deployment of Project Pronto – just because the requesting CLECs believe that unbundling the Project Pronto DSL architecture better suits their particular needs. Indeed, the "impair" analysis is not about promoting or guaranteeing the execution or success of a particular CLEC's business plan, as the CLECs would have it do. Nor does the "impair" analysis ask whether CLECs would prefer to provide DSL service via an unbundled Project Pronto DSL architecture. Rather, the legal question under the impair analysis is whether the pre-existing options for providing DSL service would somehow be made unavailable by Ameritech Wisconsin's planned deployment of Project Pronto DSL facilities. The answer to that question is undeniably no, because the CLECs' existing options (the options they are currently using to provide DSL service) will not be restricted by Project Pronto; rather, Project Pronto will provide CLECs with an additional option for providing DSL service. Tr. Vol. 4 at 1103-05.

H. The D.C. Circuit's *Ascent* Decision Does Not Support The CLECs' Unbundling Proposal.

Sprint asserts that the D.C. Circuit's decision in *ASCENT v. FCC*, No. 99-1411 (D.C. Cir.) (Jan. 9, 2001), held that advanced services are subject to the unbundling requirements of section 251(c)(3) of the 1996 Act and, therefore, the Commission should unbundle Project Pronto.[74] Sprint Br. at 4. Sprint is wrong. As a preliminary matter, the D.C. Circuit's decision in ASCENT did not address the specific issue of whether DSL facilities were subject to the

[74] Sprint similarly asserts that proposed legislation introduced in the 107th Congress establishes that the "current law requires Ameritech to provide its facilities on an unbundled basis to CLECs." Sprint Br. at 4-5. Sprint is wrong.

unbundling obligations of the Act.[75] More importantly, even if *ASCENT v. FCC* could be read to hold that DSL facilities are subject to section 251(c)(3) of the Act, that is only the beginning, not the end, of the analysis. As the Supreme Court made clear in *IUB II*, section 251(c)(3) does *not* create "some underlying duty to make all network elements available."[76] It does *not* automatically require ILECs (or their successor or assign) to unbundle every network element that they own. Rather, the Act requires the FCC (or a State commission to "determine on a rational basis *which network elements must be made available*, taking into account the objectives of the Act and giving some substance to the 'necessary' and 'impair' requirements [of section 251(d)(2)]." *Id.* (emphasis added). Accordingly, an ILEC can be required to unbundle network elements only if the "necessary" and "impair" standards of section 251(d)(2) are met. For the reasons set forth in Ameritech Wisconsin's Initial Brief and herein, the Project Pronto UNEs proposed by the CLECs do not satisfy these legal tests.[77]

I. Sprint's Claim That The Project Pronto DSL Architecture Should Be Unbundled Because It Purportedly Is "Like" A UNE Is Wrong As A Matter Of Law And Fact.

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[75] In any event, the *ASCENT* decision has no relevance to Ameritech Wisconsin and AADS. As explained earlier, *ASCENT* dealt only with the narrow issue of whether ASI, an SBC affiliate created pursuant to the conditions of the FCC's Merger Order, was a "successor or assign" of an incumbent LEC for purposes of section 251(c)(3) of the Act. Although the D.C. Circuit found that the FCC erred in concluding that ASI would not be a "successor or assign" of the SBC ILECs that transferred assets to ASI, this does not mean that AADS is necessarily a "successor or assign" of Ameritech Wisconsin. Unlike ASI, AADS was not created pursuant to the FCC's Merger Order. In fact, AADS was created in 1993 and, therefore, its creation predates not only the Merger Order but the 1996 Act itself.

[76] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 392 (1999) ("*IUB II*" or "*AT&T Corp.*")

[77] The CLECs also claim that, without unbundled access to the Project Pronto architecture, Ameritech Wisconsin will be able to "hide" customers behind its NGDLC remote terminals. There is no record support for the CLECs' assertion. The Project Pronto network architecture was deployed to allow Ameritech Wisconsin to offer new wholesale broadband services that, in turn, will allow CLECs to offer DSL services to more consumers and businesses, not to hide customers. Ameritech Wisconsin has given all CLECs nondiscriminatory access to the NGDLC architecture through its Broadband Service Offering. Tr. Vol. 4 at 1155.

Sprint claims that, because the Project Pronto DSL architecture purportedly is "like" a UNE, it should be unbundled. Sprint Br. at 25-26. Although Sprint's assertion may be rhetorically glib, it has no factual or legal basis. As a legal matter, the only "UNEs" that can exist are those that have been established by the FCC, or by a State commission, in compliance with the governing federal law. And putting aside the fact that UNEs are creatures of law, Sprint's attempted "factual" analogies also fail. For example, UNEs such as unbundled dedicated transport and unbundled high capacity loops provide CLECs with a specific and constant amount of total bandwidth within the ILEC's underlying facility (e.g., a SONET transport facility). In addition, each of these UNEs is accessible at both end-points of the UNE with the same interface specifications (i.e., bandwidth, signal characteristics, and physical connection). Such "unbundled" access is not possible for the Project Pronto DSL packet switching architecture. Tr. Vol. 4 at 1095-99, 1140-42.

Sprint nevertheless asserts that the Commission should find that the Broadband Service is a UNE, because the FCC describes the Broadband Service as a "combination of network elements." This assertion is simply irrelevant. Any network is necessarily made up of network elements and, if Sprint's logic were correct, everything in an ILECs' network would automatically become a UNE. However, Sprint's logic is not correct. The fact that, once the Project Pronto architecture is deployed, it would be made up of "network elements," is meaningless, because the FCC has never classified the Project Pronto DSL facilities as *unbundled network elements*. On the contrary, the FCC specifically *declined* in the *Project Pronto Order* to require the unbundling of those Project Pronto DSL facilities, despite the CLECs' assiduous efforts to have the FCC do so.

In short, the proper standard that a State commission must apply in determining whether to unbundle a network element is not, as Sprint suggests, whether it looks, walks and quacks like a duck. Rather, the relevant standards are specifically set forth in sections 251(d)(2) and 261(c) of the Act. The record establishes that neither standard has been met.

J. The CLECs' Claim That Alternatives To Unbundling Project Pronto Are Inadequate Is Unproven And Baseless.

1. The Broadband Service.

Sprint argues that the Commission should not consider the Broadband Service in its impairment analysis because, under paragraph 67 of the *UNE Remand Order*, the "resale" of Ameritech Wisconsin's Broadband Service Offering should be given little weight in determining whether Project Pronto should be unbundled. Sprint Br. at 28-19. Sprint's assertion is without merit. In finding that resale opportunities should be given "little weight" in conducting a necessary and impair analysis, the *UNE Remand Order* was referring to the resale of the *ILECs' tariffed retail services* at *wholesale rates*. Neither of these conditions applies to the Broadband Service. *First*, the Broadband Service Offering is not a tariffed retail service, and Ameritech Wisconsin has never offered and is not offering xDSL service to its retail end user customers. Rather, CLECs, and only CLECs, can offer xDSL service. *Second*, the Broadband Service is not being offered at wholesale rates as calculated under section 252(d)(3) of the Act. Rather, Ameritech Wisconsin is offering the Broadband Service at TELRIC-based rates. Accordingly, the FCC's determination that "little weight" should be given to resold or retail tariffed services does not apply here. Indeed, Sprint's own witness, Mr. Idoux, concedes that Ameritech Wisconsin's Broadband Service Offering is a *wholesale* offering, not a retail offering. Tr. Vol. 8 at 2828, 2830-31.

Sprint also asserts that the Broadband Service is not an adequate substitute for unbundling Project Pronto because Ameritech Wisconsin purportedly could unilaterally withdraw the Broadband Service Offering at some point in the future. Sprint Br. at 29. This assertion ignores the incontrovertible fact that the Broadband Service provides CLECs with an *additional* option for offering DSL services that does not currently exist in today's market. And in any event, the Commission's unbundling determination should be "[b]ased on the actual state of competition," not unsupported speculation about what the future might hold.[78] In other words, the baseline for determining whether or not unbundling a particular network element satisfies the Act's impair test is the facts as they exist in *today's* market.[79] Accordingly, even if the CLECs' asserted fear that Ameritech Wisconsin might withdraw the Broadband Service at some time in the future were actually to come to pass (for which there is no factual support), the Commission would have to make an unbundling determination *at that time* based on then-prevailing market conditions, then-prevailing alternatives to unbundling, and the then-prevailing totality of the circumstances.[80]

Moreover, to the extent that the CLECs are correct in speculating about possible *future* market conditions and competitive options for xDSL service providers, rather than the market conditions and competitive options that exist today, there simply is no reason to conclude that the Broadband Service Offering will not be among those competitive options. Indeed, Sprint's

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[78] *UNE Remand Order*, ¶ 23.

[79] *UNE Remand Order*, ¶¶ 278-99, 306-16, 447-64 (limiting unbundling duties based on detailed analysis of current market facts); *id.*, ¶ 149 (FCC will "periodically revise" unbundling decisions "as market conditions change and new technologies develop"; this is how the FCC avoids unnecessarily speculative decisions).

[80] *See UNE Remand Order*, ¶¶ 149-51 (noting that the FCC would revisit its unbundling rules periodically in the future to account for changed conditions).

assertion (Sprint Br. at 29) that the Broadband Service Interim Agreement gives Ameritech Wisconsin the ability to withdraw the offering for "virtually any reason" is plain wrong. The contract only allows Ameritech Wisconsin to change, modify or withdraw the offering as a result of regulatory developments. There is no credible evidence to suggest that Ameritech Wisconsin could or would terminate the service offering in the future for any other reason. Significantly, the evidence is uncontroverted that this language was principally directed at SBC's then-pending OCD/NGDLC line card ownership waiver request, which the FCC subsequently granted in its *Project Pronto Order.*

More importantly, even if Ameritech Wisconsin could freely withdraw the Broadband Service Offering in the future, such withdrawal likely would make no economic sense, absent unforeseen circumstances. Indeed, Ameritech Wisconsin does not provide retail xDSL service and, therefore, most of the economic value of Ameritech Wisconsin's planned Project Pronto DSL facilities lies in the offering of the wholesale Broadband Service to CLECs. Withdrawing the Broadband Service offering would apply equally to Ameritech Wisconsin's affiliated CLEC as to any other CLEC. If this were to occur, the Project Pronto DSL facilities would sit unused and the multi-billion dollar investment would go unrecovered. Tr. Vol. 1 at 126-127. Sprint's concern that the offering will be withdrawn is baseless.

As part of its "parade of horribles," Sprint also asserts that the Broadband Offering impairs the CLECs' ability to "overcome AADS' first to market competitive advantage," and to "offer innovative, competitive products." Sprint Br. at 30. Again, Sprint is wrong. The record establishes that Ameritech Wisconsin is providing all CLECs, including AADS, with access to the DSL capabilities of the Project Pronto network on the exact same terms and conditions, through the Broadband Service Offering. Tr. Vol. 4 at 1093-96. The CLECs have equal

opportunity to use those facilities and compete with AADS in the advanced services market. Additionally, the record establishes that the Broadband Service offering will enable CLECs to differentiate their DSL service offerings from those of AADS and other CLECs. Ameritech Wisconsin also committed in the FCC proceeding leading to the *Project Pronto Order*, and is required by the terms of that FCC Order, to work collaboratively with CLECs to introduce additional capabilities and features into the Project Pronto network architecture, including constant bit rates (CBR) service offerings.[81]

Sprint nevertheless attacks Ameritech Wisconsin's commitment to work collaboratively with CLECs, claiming that the collaborative processes are flawed, because they "cannot force Ameritech to do anything that it does not want to do." Sprint Br. at 31. But that assertion is totally beside the point. After all, the planned Project Pronto DSL investment in Wisconsin is an investment by Ameritech Wisconsin, not by the CLECs. Moreover, the CLECs fail to provide any evidence whatsoever that Ameritech Wisconsin will not work collaboratively and in good faith with the CLECs in the effort to introduce new capabilities and features into the Project Pronto network architecture, provided that deployment of those new capabilities and features makes economic and operational sense. In fact, the only "evidence" that Sprint presents in support of its theory is that Ameritech Wisconsin "*qualified* [its] commitment to providing additional line cards by stating that it will not make line cards available that harm the capacity of the platform or the service quality of the end users that are using the shared facility." Sprint Br. at 31. This hardly suggests that Ameritech Wisconsin will not cooperate in expanding the

[81] Included in these collaborative efforts is the establishment of a process whereby all interested carriers will work directly with the supplier industry for the creation of new, compatible technologies, capabilities, and features. These collaboratives will ensure that the introduction of an additional feature or capability into this architecture does not impair the capacity of the deployed Project Pronto RTs, and that such introductions are technologically and operationally feasible in Ameritech Wisconsin's network architecture.

capabilities of the Project Pronto network architecture. Rather, it shows that Ameritech Wisconsin is concerned (and rightfully so) about maintaining the integrity of its network.

Finally, the CLECs baldly assert that the Broadband Service will not allow them to sufficiently "differentiate" their DSL service offerings from those of Ameritech Wisconsin's data affiliate, AADS, and of other CLECs. As a threshold matter, this assertion ignores the fact that CLECs are free to differentiate their services through numerous other means, such as self-provisioning some or all of their own DSL facilities. Moreover, the FCC has found that the Broadband Service itself will allow CLECs to differentiate their product offerings and compete with Ameritech Wisconsin's affiliate. As the FCC found in the *Project Pronto Order,* "SBC's commitment will help competitive LECs provide *innovative, exciting new services*" and enable CLECs to "compete more effectively against SBC by *differentiating their product offerings.*" *Project Pronto Order,* ¶ 45 (emphasis added). In addition the FCC found:

> Our approval of SBC's request subject to its pro-competitive commitments . . . *paves the way for Rhythms and other carriers to compete for those customers* [who would not be able to receive DSL services without Project Pronto]. SBC's commitments will facilitate Rhythms' access to remote terminals and enable Rhythms and others to differentiate their product offerings from those of SBC's Advanced Services Affiliate.

Id., ¶ 28 (emphasis added). Other than empty rhetoric, the CLECs have no response to the FCC's clear – and correct – findings on this issue.

2. DSLAM Collocation.

Sprint also asserts that the Commission should not consider the collocation of DSLAMs at remote terminals when conducting its impair analysis. In support of its position, Sprint asserts that "[t]he FCC and the ICC have found that CLEC collocation of DSLAMs are problematic." Sprint Br. at 32. This assertion is another red-herring. Regardless of what the FCC has or has not said about the alleged difficulties associated with collocation of DSLAMs at RTs, the simple

fact remains that, in deciding whether packet switching functionality needed to be unbundled as part of its *UNE Remand Order*, the FCC necessarily found that collocating a DSLAM at an RT was a viable alternative to such unbundling. The FCC considered the purported costs and delays of DSLAM collocation at RTs in its analysis, and found that unbundling packet switching was not necessary so long as incumbent LECs allow the collocation of DSLAMs at RTs. *UNE Remand Order*, ¶ 309. Because Ameritech Wisconsin permits the collocation of DSLAMs at RTs, under the FCC's rules, Ameritech Wisconsin cannot lawfully be required to unbundle the Project Pronto packet switching network.

Sprint also claims that DSLAM collocation is not a viable alternative to unbundling Project Pronto because it purportedly is costly and time consuming. In support of this assertion, Sprint claims that it is in the process of collocating a DSLAM at a remote terminal site in Kansas with SWBT, and that it has taken "months and thousands of dollars to just collocate at a single Remote Terminal." Sprint Br. at 33. These self-serving assertions (although so vague as to be meaningless) are not part of the record in this proceeding and therefore should not be considered by the Commission. Sprint also points to the self-serving assertions of one of its witnesses, Mr. Idoux, who stated that, "while there might be some target time frames of 90 to 180 days for collocation arrangements, Sprint's typical arrangement in other parts of the country range anywhere from five months to two years." Mr. Idoux also estimates "the cost of collocation at the terminal to be about $110,000 a piece." Tr. Vol. 8 at 2827-28. These assertions, of course, have nothing to do with, and by their own terms do not relate to, Ameritech Wisconsin.

More importantly, the CLECs' claims that they will somehow face greater costs, or lower quality of service, if they are denied unbundled access to the Project Pronto DSL architecture, is legally irrelevant. The Supreme Court has made clear that a mere showing that the failure to

unbundle would increase a CLEC's costs or decrease service quality does not satisfy section 251(d). *See IUB II*, 525 U.S. at 390; *see also GTE*, 205 F.3d at 424. And as noted above, the FCC has already weighed all of these issues in reaching its conclusion – and establishing a specific rule – regarding the unbundling of packet switching facilities.[82]

In addition to being legally irrelevant, Mr. Idoux's suggestion that collocating a DSLAM at an RT would be more expensive than purchasing Project Pronto "UNEs" has no factual support. To the contrary, as Ameritech Wisconsin explained in its Initial Brief (at 218-27), if the CLECs' Project Pronto UNE/line card collocation proposal is adopted, it will introduce inefficiencies into the network that would increase Ameritech Wisconsin's costs of deploying these facilities. As a matter of logic, these increased deployment costs would result in TELRIC-based prices for the Project Pronto UNEs that would be higher than would otherwise be charged for the Broadband Service if the facilities were deployed as intended, and likely higher than other DSL or other advanced services options. Tr. Vol. 1 at 133-34. In short, there is no evidence that unbundled access to Project Pronto DSL facilities would be less expensive than the other options for providing DSL service.[83]

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[82] The CLECs also raise the same tired argument that DSLAM collocation is not a viable option to unbundling Project Pronto, because of space constraints. CLEC Br. at I.C.-98. As Ameritech Wisconsin explained in its Initial Brief (at 192), as a condition of granting the SBC ILECs' request for ownership of line cards used in conjunction with the Project Pronto architecture, Ameritech Wisconsin is required to make collocation space available for CLECs' stand-alone DSLAMs at Ameritech Wisconsin's RT sites. *Project Pronto Order*, ¶ 34-35, 61; Tr. Vol. 1 at 162; Tr. Vol. 4 at 1199-1200. The CLECs' alleged concerns about rights of way, easements, power and security (CLEC Br. at I.C.-99) are unsupported by the record, and irrelevant.

[83] In any event, even if they were somehow relevant, Mr. Idoux's time and costs estimates carry no weight. Mr. Idoux "volunteered" the cost estimate for the first time during live re-direct examination, and Mr. Idoux provided no documentation, cost analysis or any other support for this figure. While such an "off the cuff" cost estimate might carry some weight if presented by a witness with relevant experience, Mr. Idoux is not an economist nor has he ever been responsible for installing outside plant. Tr. Vol. 8 at 2778. As for Mr. Idoux's time estimate, it too lacks any underlying support.

3. Copper Loops.

Sprint asserts that "through its Project Pronto upgrades in Wisconsin [Ameritech Wisconsin] can provide DSL service to more than 87% of its access lines" and that, absent the unbundling of Project Pronto, "CLECs will not be able to access a population anywhere close to that market size." Sprint Br. at 6. Similarly, Sprint asserts that existing copper loops are inadequate substitutes for unbundling Project Pronto because, "if [CLECs] use copper to line share while that Ameritech affiliate, AADS, is using Project Pronto," AADS would have two advantages – AADS would not have to pay for loop conditioning, and its service would be capable of transmitting data faster. Sprint Br. at 36. Sprint's claims are unproven and wrong on all counts.

Sprint's arguments incorrectly assume that, absent unbundling Project Pronto, CLECs would be forced to use copper loops to provision DSL service, while AADS would be permitted to use the Project Pronto DSL architecture. This simply is not true. Ameritech Wisconsin's proposed wholesale Broadband Service would be made available to all CLECs on the same terms and conditions. No CLEC would be forced to use all-copper loops (or their HFPL) or RT collocation of DSLAMs in instances where the Project Pronto DSL architecture had been deployed. Rather, *any* CLEC could obtain the Broadband Service offerings on exactly the same terms and conditions as AADS. In other words, to the extent that Ameritech Wisconsin were to deploy Project Pronto DSL facilities in Wisconsin, use of those facilities would be available, via the wholesale Broadband Service, to *all* CLECs, not just AADS, on a non-discriminatory basis.[84] Tr. Vol. 1 at 104; Tr. Vol. 4 at 1093-96.

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[84] For these same reasons, the CLECs' assertions that Ameritech Wisconsin "is proposing a separate but unequal network for the CLECs" and "proposes to relegate CLECs to using the legacy embedded" network, as well as their assertion that the "CLECs are relegated to using only . . . copper facilities," are wrong.

Additionally, with the Broadband Service Offering, Ameritech Wisconsin would provide CLECs with the full advanced services functionality of the DSL-related equipment that Ameritech Wisconsin plans to deploy under Project Pronto. Tr. Vol. 4 at 1093-96. Indeed, with the Broadband Service Offering, CLECs would have the capability to offer DSL services to any customer that could be reached with the Project Pronto network architecture. Accordingly, Sprint's suggestion that Ameritech Wisconsin "can provide DSL service to more than 87% of its access lines," while the "CLECs will not be able to access a population anywhere close to that market size if denied unbundled access," as well as its assertion that "without access to the remote DSLAM capability of the NGDLC remote terminal, CLECs will not have the same opportunities afforded Ameritech Wisconsin in providing xDSL services to a broader range of geographically dispersed customers living at certain distances from the central office,"[85] are trumped-up straw men and simply do not hold water. Again, with the Broadband Service, all CLECs will have the same opportunity to serve the geographical area that can be reached with the Project Pronto DSL facilities.[86]

The CLECs also assert that copper loops and subloops are not adequate substitutes for unbundling the Project Pronto DSL architecture, because they may not be usable for DSL services due to alleged cross-talk problems. CLEC Br. at I.C.-101. As Ameritech Wisconsin explained in its Initial Brief (at 189-90), the CLECs provide no technical basis or justification for concluding that potential "cross-talk" problems would *in fact* exist or that such problems[87]

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[85] CLEC Br. at I.C.-101.

[86] Notably, the FCC found in the *Project Pronto Order* that, as a result of the Broadband Services offering, data CLECs will be able to reach millions of customers that they could not efficiently or economically reach before. Tr. Vol. 1 at 104; *Project Pronto Order*, ¶ 4.

[87] Although the issue of potential "cross talk" problems is being considered by various bodies, no regulatory or industry body has concluded that such a problem will in fact occur.

(which also would potentially arise whenever a CLEC collocated a DSLAM at an RT),[88] if they were to arise, could not be resolved. Tr. Vol. 4 at 1157-58.

The CLECs also assert that copper loops are an inadequate substitute for unbundling Project Pronto, because Project Pronto purportedly gives Ameritech Wisconsin incentive to retire its copper plant. CLEC Br. at I.C.-102. As Ameritech Wisconsin explained in its Initial Brief (at 189-90), the CLECs' assertion is refuted by the record. Tr. Vol. 4 at 1092. Under the FCC-adopted commitments and the *Project Pronto Order*, Ameritech Wisconsin must continue to follow its established copper retirement policy. Under this policy, decisions to remove copper cable are not affected by the deployment of the Project Pronto network overlay, and are not affected by the current users of copper facilities (whether Ameritech Wisconsin's retail customers, affiliated telecommunications carriers, or unaffiliated telecommunications carriers). In fact, the FCC commitments require that Ameritech Wisconsin not retire, through September, 2001, any central office terminated copper loops overlaid by the Project Pronto architecture, except as required by acts of God. Additionally, Ameritech Wisconsin is prohibited from using its retirement policy through September 2003 to retire more than 5% of its total CO-terminated copper loops in service as of September 1, 2000. *Project Pronto Order*, App. A at p. 41.

In any event, and explained above, the Commission cannot properly unbundle the Project Pronto DSL architecture based on the CLECs' unsubstantiated assertion that Ameritech Wisconsin might remove copper from its network after September 2003. The FCC has stated that an unbundling determination must be "[b]ased on the actual state of competition." *UNE Remand Order*, ¶ 23. Accordingly, the Commission cannot lawfully unbundle Project Pronto DSL facilities *now*, in 2001, based on the CLECs' speculation about what might happen in 2003.

[88] In other words, the problem would arise from CLECs' as well as ILECs' placement of facilities at an RT and would affect all DSL providers equally.

Rather, if the events that the CLECs speculate *could* happen were to ever come to pass, the Commission would have make an unbundling determination *at that time* based on the market conditions and alternatives existing then. Accordingly, the CLECs' concern that Ameritech Wisconsin has no restrictions from retiring its copper plant after 2003 is completely irrelevant to the Commission's current unbundling analysis which, of course, is occurring in 2001.

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In sum, Sprint, AT&T and other CLECs can and do provide advanced services to end-users today through a variety of different technologies, including cable modem and wireless technologies, that do not depend on the use of Ameritech Wisconsin's network at all.[89] And those CLECs can provide DSL services to end-users today utilizing solely their own facilities, or by leasing from Ameritech Wisconsin certain facilities such as unbundled all-copper loops and unbundled copper subloops (or the HFPL of those copper loops or subloops) and combining those facilities with their own DSLAM equipment (collocated in or near Ameritech Wisconsin's CO or RT sites). Tr. Vol. 4 at 1105. Deployment of Project Pronto would not diminish the availability of these options for providing advanced services, but would provide CLECs with yet another option – the Broadband Service offerings. Accordingly, the Commission should reject the CLECs' Project Pronto UNE/line card collocation proposal.

V. COLLOCATION OF LINE CARDS.

Sprint incorrectly argues that the Commission should require Ameritech Wisconsin to permit the "collocation" of CLEC-owned line cards in Ameritech Wisconsin's NGDLCs.[90]

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[89] As the Supreme Court held in *IUB II,* the impair standard "is not achieved by disregarding entirely the availability of elements outside the network." *IUB II,* 525 U.S. 366 at 392.

[90] In support of its assertion, Sprint asserts that "[t]o effectuate the unbundling of various elements of Project Pronto, Ameritech must permit CLECs on a non-discriminatory basis to virtually collocate line cards in Ameritech's NGDLC equipment." Sprint Br. at 47. This

Specifically, the CLECs assert that "to the extent Ameritech rests its objections on allegations that incompatible line cards could harm or disrupt the functioning of the NGDLCs, this is simply a 'red herring.' A simple fix to this problem is that Ameritech's vendor Alcatel should identify the line cards that are compatible with their NGDLCs."

The CLECs are talking out of both sides of their mouths. On the one hand, the CLECs claim that they will only use line cards designed by Alcatel that are proven compatible with Ameritech Wisconsin's NGDLCs. But, of course, that is precisely what Ameritech Wisconsin's proposed Broadband Service would made available to them. On the other hand, the CLECs assert that they want to place their own line cards to provide "services that differ from Ameritech's unspecified bit rate Broadband Service Offering." Sprint Br. at 47. More specifically, the CLECs are requesting that all ITU-T and ATM QoS classes be offered. However, UBR and a limited version of CBR are the only ATM classes of service that the Alcatel Litespan 2000 NGDLC system currently supports. Tr. Vol. 4 at 1164-67. Accordingly, the CLECs' "simple fix" is totally disingenuous, and would not resolve the incompatibility problem, nor the exhaust problems explained in section I.A.1 above, that the CLECs' stated desire for all ITU-T and ATM QoS classes would cause.

Although lacking any sort of in depth analysis, the CLECs also claim that line cards are the type of equipment suitable for collocation and that the "collocation" of line cards is necessary to access UNEs. As Ameritech Wisconsin explained in its Initial Brief (at 208-18), line cards are not the type of equipment that qualifies for collocation, nor is such "collocation" necessary to

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assertion makes no sense, as the "collocation" of line cards does nothing to "effectuate" the unbundling of the Project Pronto architecture. Rather, as Sprint well knows, just the opposite is true: The CLECs are attempting to use their "Project Pronto UNE" proposal as an artificial bootstrap for their line card "collocation" proposal, because under section 251(c)(6) of the Act, collocation can only be required when such collocation is "necessary" to obtain access to unbundled network elements.

access UNEs. More specifically, with respect to the CLECs' assertion that line cards are necessary to access subloops, the CLECs are objectively wrong. Not surprisingly, the CLECs provide no basis or record support for their position, other than to baldly assert:[91]

> [L]ine cards can clearly be "necessary" for access to UNEs under Section 251(c)(6). They perform the same function as a DSLAM, and in cases where the collocation of a DSLAM is not practical, either because of a lack of space or the lack of economic subscriber density, collocation of a line card is the only feasible way the CLEC may have of accessing the ILEC's subloop elements in order to offer broadband services.

Sprint Br. at 48. Putting aside for the moment the fact that CLECs cannot access subloop elements with a line card (as the record establishes), the CLECs' assertion rests on two assumptions that are factually incorrect and, even if correct, legally insufficient to meet the "necessary for . . . access to unbundled network elements" standard.

First, the CLECs claim that space constraints prohibit DSLAM collocation at RTs. This claim is not only unsupported by any competent evidence and refuted by the record, but it also entirely ignores the requirements of the *Project Pronto Order*. Indeed, the *Project Pronto Order* obligates Ameritech Wisconsin to ensure that adequate collocation space is available at or adjacent to its RTs, and even provide for different types of collocation to meet CLECs' needs. *Project Pronto Order*, ¶¶ 34-35 and App. A at 38-39. The FCC found these commitments significant and procompetitive, and they cannot be ignored in the Commission's analysis of whether line card collocation is "necessary" to access UNEs.

Second, the CLECs claim that DSLAM collocation purportedly is impractical from an economic perspective. The "necessary" test under section 251(c)(6), however, has nothing to do with whether something is desirable to a particular CLEC from an economic perspective. Rather, the question is whether "collocation" is objectively "necessary" to achieve

[91] The CLECs do not contend that collocation of line cards is necessary for interconnection.

interconnection or access to UNEs. *GTE Service Corp.*, 205 F.3d at 424. The U.S. Supreme Court and the D.C. Circuit have made clear that the term "necessary," as used in the 1996 Act, must be given its ordinary and fair meaning. Specifically, the D.C. Circuit held that the term "necessary" means "*required or indispensable* to achieve a certain result." *Id.* at 422 (emphasis added). Of particular relevance here, this means that increased cost or decreased service quality alone cannot be deemed to create a "necessity."[92]

Perhaps most important, the CLECs' factual assertion that "collocation" of line cards is necessary to access subloop elements is wrong, because CLECs cannot use a line card to access such subloops. As Ameritech Wisconsin explained in its Initial Brief (at 214-15), the FCC's Rules make clear that access to subloops are available only at accessible cross-connect points. *UNE Remand Order,* ¶ 206; 47 C.F.R. § 51.319(a)(2). The line card is not located at such a cross-connect point. Rather, it resides in a slot within a channel bank within an NGDLC. The slot in the channel bank, not the line card, is hard-wired to the NGDLC's back plane. Tr. Vol. 1 at 314; Tr. Vol. 4 at 1111. Thus, only the rest of the NGDLC itself, not a separate subloop, is accessible from the channel bank slot.[93]

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[92] *IUB II*, 525 U.S. at 389-92 ("the [FCC's] assumption that any increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element 'necessary' . . . is simply not in accord with the ordinary and fair meaning of th[at] term[]"); *GTE Service Corp. v. FCC*, 205 F.3d 416, 422-23 (D.C. Cir. 2000) ("the FCC cannot reasonably blind itself to statutory terms in the name of efficiency").

[93] As Ameritech Wisconsin explained in its Initial Brief (at 214), the only two ways to access a subloop at an RT are for the CLEC to (i) collocate a DSLAM, in which case it can use a cable to connect its DSLAM to the nearest cross-connect point for subloops (usually at the SAI), or (ii) use the "engineering controlled splice" arrangement under the SBC ILEC commitment in the *Project Pronto Order* (¶ 61), which allows access to a copper subloop at the RT before it connects to Ameritech Wisconsin's NGDLC facilities. Vol. 1 at 161-62; Tr. Vol. 4 at 1108-09. Neither of these involves access to a UNE at an NGDLC because, as noted above, NGDLC line cards cannot be separately accessed from other equipment. Alcatel 10/12/00 FCC Comments at 15. Initial Appendix, Tab E.

In further support of their line card "collocation" proposal, the CLECs assert that "[n]othing in §251(c)(6) compels a CLEC to utilize uneconomic forms of provisioning its service. Rather, the CLEC has the right to collocate technically compatible equipment at *any* ILEC premises so long as the equipment it wishes to collocate is necessary for access to UNEs (or interconnection), as is clearly the case with line cards." Sprint Br. at 48. The CLECs' assertion not only begs the question, it attempts to turn the law on its head. Contrary to their assertion, the D.C. Circuit has made clear that the CLECs cannot dictate where "collocation" equipment is located is Ameritech Wisconsin's central office. As Ameritech Wisconsin explained in its Initial Brief (at 209-10), although the FCC originally issued collocation rules that required incumbent LECs to allow CLECs to collocate equipment "in any unused space within the incumbent's premises" and allowed CLECs to "choose where to establish collocation on the LEC's property" (*GTE Service*, 205 F.3d at 426), the D.C. Circuit vacated that rule, holding that "[t]here is nothing in [section] 251(c)(6) that endorses" allowing a CLEC to "pick and choose preferred space on a ILEC's premises." *Ibid.* That, however, is *exactly* what the CLECs propose in this case. Indeed, the CLECs propose that Ameritech Wisconsin permit CLECs to "collocate" line cards *inside* a specific piece of *Ameritech Wisconsin's* equipment, the NGDLC, and to functionally integrate those line cards with the rest of the hardware and software in the NGDLC. *See Project Pronto Order*, ¶ 4, n.11 (describing line cards). As a result, the CLECs alone would completely dictate where on Ameritech Wisconsin's premises the line cards would be "collocated" (*i.e.*, in a particular channel bank assembly in the NGDLC), in violation of the D.C. Circuit's holding in *GTE Services, Inc.*

The CLECs' assertion that they cannot be compelled to "utilize uneconomic forms of provisioning its service," not only misstates the law, it is also ironic given that the CLECs'

proposal ultimately would create for Ameritech Wisconsin the dilemma of building a DSL network that would be constructed and utilized in an uneconomic manner. Indeed, the CLECs' proposal would have Ameritech Wisconsin invest in a manner that suits these particular CLECs' business plans, regardless of the financial consequences to Ameritech Wisconsin and its investors, and regardless of the detrimental impact it would have on the slot capacity in the NGDLC, on the bandwidth capacity of the NGDLC data transport, on service provisioning, and on maintenance and repair processes. Tr. Vol. 4 at 1151. Even more ironic is the fact that, if the CLECs' proposal were adopted and if Ameritech Wisconsin were to proceed with its deployment of the Project Pronto DSL architecture (which it likely would not do), the end result would prove to be more expensive for CLECs than if they had utilized the Broadband Service. Tr. Vol. 1 at 133-34. Of course, the most important fact is that, from Ameritech Wisconsin's perspective, adoption of the CLECs' proposal would almost assuredly render further deployment of Project Pronto DSL facilities economically unviable. As a result, Wisconsin CLECs, and more importantly, Wisconsin consumers, would be deprived of a competitive choice in the emerging market for high-speed Internet access and data services.

For these reasons, and all of the reasons set forth in Ameritech Wisconsin's Initial Brief, the Commission should reject the CLECs' line card "collocation" proposal.

(a) Should Ameritech's broadband and combined voice and data service offerings be made available and priced according to UNE methodology? Should they be available as part of the UNE-P offering?

See section I.C.(6) *supra.*

(b) If Ameritech must unbundle certain packet switching elements, which ones and/or under what circumstances?

1. How does Project Pronto include packet switching?

2. Is NGDLC a form of packet switching?

3. **Should Ameritech be required to unbundle the NGDLC if it is a form of packet switching?**

See section I.C.(6) *supra.*

(c) **What options, including collocation, should be made available in order for CLECs to provide DSL services?**

1. **Is it sufficient to provide a CLEC the ability to purchase an engineered control splice (ECS) in the field in order to collocate its own DSLAM near the Project Pronto Next Generation Digital Loop Carrier (NGDLC)?**

2. **Alternatively, should a CLEC be allowed to collocate its own line card in the NGDLC?**

3. **Should CLECs be:**

   a. **Required to establish their own physical path from a DSLAM or a UDLC device in the field to the central office or**

   b. **Provided access to an IDLC connection?**

   In answering this question the following determinations need to be made:

      i. **Can this IDLC traffic be routed to a CLEC?**

      ii. **If IDLC traffic cannot be routed to a CLEC, should a CLEC be given rates based on the more efficient IDLC technology?**

4. **If Ameritech is not required to provide collocation of the line card in its NGDLC, then should Ameritech:**

   a. **Be required to offer its Broadband Service that uses Project Pronto architecture as an end-to end unbundled element?**

   b. **Be allowed to make its Broadband Service offering available at rates of its own choice?**

   c. **Have the option to change its pricing method from the cost-based prices offered in this docket?**

See section I.C.(6) *supra.*

(d) **Whether offered as separate UNEs, an end-to-end unbundled element, or as a voluntary offering only, has Ameritech appropriately priced the elements of the Project Pronto architecture using TELRIC methodology?**

Ameritech Wisconsin stands on its Initial Brief. *See* AW Br. 233-35. The CLECs did not address this issue and thus they have waived any objections to Ameritech Wisconsin's Cost Studies.

(7) **Should special construction charges be assessed for the provisioning of unbundled loops and, if so, how should those special construction charges be determined?**

The Commission's Staff carefully outlined the issues in this docket, and their outline clearly identified the situations in which "special construction charges . . . for the provisioning of unbundled loops" were at issue. In its opening brief, Ameritech Wisconsin followed the Staff's direction and demonstrated that such charges are required in the following situations:

- unbundling a loop from an Integrated Digital Loop Carrier ("IDLC");
- constructing a loop or other facility from scratch, *i.e.* a "new build," where additional charges are assessed under retail tariffs;
- conditioning a voice-grade loop to carry data traffic.

With respect to conditioning and IDLC, the FCC has expressly held that incumbent LECs are entitled to recover the additional costs associated with provisioning unbundled loops. AW Br. at 237, 242-43, *citing First Report and Order,* ¶¶ 382 & 384. Similarly, forcing Ameritech Wisconsin to build new facilities without compensation would run afoul of the Eighth Circuit's holding that incumbent LECs need only provide access to their existing networks, and cannot be forced to build new facilities on demand. AW Br. at 240.

Unable to win on specifics, the CLECs try to muddle Staff's outline by opening with a lengthy, vague attack on "special construction charges" in general (even though Ameritech Wisconsin no longer assesses many of the charges they complain about), and on superseded versions of Ameritech's Facilities Modification Policy. CLEC Br. at I.C.-106-27. Their apparent goal is to convince the Commission that anything called a "special construction charge" or "Facilities Modification Policy" is bad, even if it has nothing to do with the issues in this

docket. That way, the Commission will not focus on the specific facts and circumstances – and the controlling legal authorities – that are really at issue.

The CLECs' approach is improper, and the Commission should decline their invitation to confuse the issues. Accordingly, we stay with the Staff outline below. Before doing so, we take a moment to set the record straight on the points raised by the CLECs in their non-specific diatribe.

1. Ameritech Wisconsin's proposed charges are not "discriminatory" (CLEC Br. at I.C.-110). In fact, the first objective stated in the Facilities Modification Policy is to ensure nondiscrimination between retail and wholesale customers. Tr. Vol. 6 at 1965. Ameritech Wisconsin pays for constructing its own facilities for its own operations. It is perfectly nondiscriminatory (and only fair) that CLECs bear the cost of constructing facilities for their operations. Tr. Vol. 6 at 1966.

With respect to new builds, Ameritech Wisconsin's policy provides for cost recovery where Ameritech Wisconsin would assess construction charges on its own retail customers pursuant to retail tariffs that have been in effect for over two years. Tr. Vol. 6 at 1967, 2000-01. With respect to conditioning, Ameritech Wisconsin does not provide advanced services and thus does not condition loops for itself; Ameritech Wisconsin does condition loops for its advanced services affiliate, and when it does, Ameritech Wisconsin recovers its cost from the affiliate just the same as it would from any CLEC. Tr. Vol. 6 at 1985. And with respect to IDLC, where a retail customer orders a private line (the way a CLEC orders a private line when it asks for a single loop), that customer also bears the cost. Tr. Vol. 6 at 1973.

The irony is that the CLECs' complaint about discrimination is not only unfounded, but illogical. The premise of their complaint is that they should pay the same prices for unbundled

loops as a retail customer would pay for retail service. But the very purpose of this proceeding is to set prices for unbundled loops that are *different* from retail. After all, retail customers do not lease pieces of cable, the way CLECs lease unbundled loops, and they do not pay TELRIC-based rates. Retail customers buy retail service, and they pay retail prices. The CLECs' professed desire for nondiscrimination versus retail customers rings hollow, as no CLEC would contend that TELRIC rates aren't high enough, and that it should pay full retail prices for loops.

2. The Illinois Commerce Commission order cited by the CLECs (at I.C.-121-22) did *not* reject the charges at issue here. To the contrary, that order (1) agreed with Ameritech Illinois that federal law required cost recovery for conditioning loops, (Reply Appendix, Tab C, at 58); (2) rejected the CLECs' view that conditioning costs are already included in standard loop prices (*Id.* at 63 ("The Commission finds that the cost of loop conditioning is not recovered in Ameritech's current TELRIC rates and qualifies as special construction")); and thus (3) held that CLECs should pay special construction charges where Ameritech Illinois' retail customers are assessed such charges – just as Ameritech Wisconsin Illinois proposes here (*id.*). The ICC order did deny recovery for IDLC, but not because cost recovery was improper. Rather, that aspect of the decision was based on the ICC's view that such costs were already recovered in Ameritech Illinois' standard loop prices. That view (with which we disagree) is irrelevant here, as it was founded on a different set of loop prices in a different state. The standard loop prices here unquestionably do *not* include costs for IDLC – as we show below, and as even the CLECs acknowledge.[94]

3. The 1999 Michigan Public Service Commission order cited by the CLECs is out of date and out of place. With respect to conditioning, the MPSC has subsequently held that

[94] For the same reason, the Indiana commission decision cited by the CLECs has no bearing here.

additional charges *are* appropriate. Opinion and Order, *In re Application of Ameritech Michigan for Approval of Cost Studies and Resolution of Disputed Issues Related to Certain UNE Offerings,* at 17 (MPSC Case No. U-12540, March 7, 2001) (Initial Appendix, Tab I). The MPSC found that "as the FCC has ruled, ILECs are entitled to recover the costs associated with loop conditioning," and it rejected the argument (raised by the CLECs here) that such costs were already recovered by standard loop prices. *Id.*

Meanwhile, the CLEC-cited 1999 order did not address new builds at all. Instead, it addressed situations in which "Ameritech had existing facilities in the areas that BRE requested access to the unbundled loops," but additional work was necessary to permit unbundling. *Michigan Bell Tel. Co. v. Strand*, Case No. 99-CV-71180-DT, at 6, 13 (E.D. Mich. slip. op. Jan. 4, 2000) (Initial Appendix, Tab L.) Here, by contrast, the issue *is* new builds, and the MPSC's decision (which relates to charges under a prior special construction policy) is neither here nor there.

4. The CLECs' reliance on the Ohio commission's decision in the ICG arbitration is equally misplaced. In its more recent decision in the AT&T arbitration, the Ohio commission specifically held "we find the FMOD [Facilities Modification] policy, in general, to be reasonable;" upheld separate charges for conditioning loops, just as Ameritech Wisconsin proposes here ("Ameritech [should] charge AT&T established TELRIC rates *and a Commission-approved line conditioning rate*"); and stated that it has *not* resolved the other cost questions here, which are currently before the Ohio commission in a generic proceeding. June 21, 2001, Arbitration Award, PUCO Case No. 00-1188-TP-ARB, at 48. (Reply Appendix, Tab J).

(a) Should CLECs be charged special construction or any other facilities modification charges for complex modifications (including build-arounds)?

1. If special construction charges are appropriate, should the charges be assessed as recurring charges or nonrecurring charges?

2. **If special construction charges are appropriate, is it appropriate to develop standardized rates or time and material rates?**

3. **How should those rates be determined?**

The vast majority of Ameritech Wisconsin's proposed charges for "complex modifications" are for unbundling loops served by IDLC, and for conditioning. They are discussed below. One point here, however, warrants separate discussion. The CLECs charge that "Ameritech intends to assess special construction charges on carriers ordering unbundled interoffice transport when the electronic equipment accommodating transport capacity between two central offices may be taxed and no additional capacity exists." That is not true. Ameritech does *not* charge CLECs in such instances. To the contrary, charges are not applied if the capacity added will serve other customers. Tr. Vol. 6 at 1999. The only time the CLEC is assessed a separate charge is in the rare case when it requests dedicated facilities for use by itself alone. *Id.* It is entirely proper that a CLEC bear the full cost of a facility when it wants to use the full capacity of that facility, and when it expressly excludes other carriers and end users. The CLECs' idea that Ameritech should share (or even bear) the cost when it does not share the facility is absurd.

(b) **Should CLECs be charged special construction or any other facilities modification charges for IDLC/UDLC interconnections?**

1. **If special construction charges are appropriate, should the charges be assessed as recurring charges or nonrecurring charges?**

2. **If special construction charges are appropriate, is it appropriate to develop standardized rates or time and material rates?**

3. **How should those rates be determined?**

In most cases, a requesting carrier seeks access to a loop that has its own connection to the Ameritech Wisconsin switch, so that connection can be moved to a CLEC switch. Ameritech Wisconsin's standard loop prices reflect that standard situation, in which a facility is simply

transferred from one switch to another. An Integrated Digital Loop Carrier ("IDLC") loop, though, shares a connection with many other loops, and unbundling an IDLC loop requires Ameritech Wisconsin to remove the requested loop and place it on a parallel non-IDLC facility (either a traditional loop or a UDLC) that has its own separate connection. In some cases, that requires constructing a new non-IDLC facility, as opposed to simply transferring an existing facility.

Should the requesting carrier bear the cost of the facility it makes Ameritech Wisconsin create? The 1996 Act says it should, because it requires CLECs to pay incumbents for "the cost . . . of providing the . . . network element" requested (47 U.S.C. § 252(d)(1)(A)). And the FCC has expressly held such cost to include that of "separating out individual loops from IDLC facilities." *First Report and Order*, ¶ 384. The CLECs predictably claim they should not pay the cost of serving their customers, even though they get to pocket the revenues. But the only legal authority the CLECs offer – the FCC's *First Report and Order* – refutes their position rather than supports it. The CLECs cite paragraph 384 of that FCC order for the proposition that it is "technically feasible to unbundle IDLC-delivered loops." CLEC Br. at I.C.-131. But technical feasibility is not the question here, for Ameritech Wisconsin does not deny its obligation to provide access. The issue here is the cost Ameritech Wisconsin is entitled to recover for such access, and on that issue paragraph 384 itself unequivocally states that the cost of "separating out individual loops from IDLC facilities . . . . will be recovered from requesting carriers" – a holding the CLECs omit from their quotation and from their discussion.

Equally unavailing is the CLECs' contention that the general TELRIC principles discussed elsewhere in the *First Report and Order* preclude cost recovery for IDLC. Putting aside the fact that TELRIC is no longer the law (*Iowa Utilities Board III*, 219 F.3d at 750-51),

the CLECs are essentially taking the absurd-on-its-face position that the FCC, having announced an unambiguous rule of cost recovery for IDLC in its *First Report and Order*, turned around and issued a rule of *non*-recovery in the very same order – even though the general discussion of TELRIC on which the CLECs rely says nothing about IDLC.

Conceding that Ameritech Wisconsin should recover its IDLC costs somewhere, the CLECs next contend that Ameritech Wisconsin is already recovering them in its standard prices for unbundled loops. The CLECs' assertion is not only in error, but also impossible. As the CLECs themselves admit, Ameritech Wisconsin's cost studies (also before the Commission in this proceeding) assume a least-cost network that does not include *any* IDLC. *See* CLEC Br. at I.C.-53 ("Ameritech's LFAM [cost study] documentation at section 2, Tab 5 indicates that all unbundled loops will be provisioned by the use of *non*-integrated DLC technology") (emphasis added). Those cost studies are based on the standard setting, in which a non-integrated facility exists and is simply transferred from one switch to another, as opposed to the IDLC setting here, in which a non-integrated facility does not exist and must be created.

Because the inclusion of IDLC costs in a non-IDLC cost study is impossible, the CLECs resort to an egregious mischaracterization. The cost of an IDLC loop consists of two components: (1) the cost of converting it to a non-IDLC facility, which is recovered by the separate charge at issue here, and (2) the cost of the non-IDLC facility that results, which is transferred to the CLEC and recovered by the standard price. The CLECs claim that (1) is included in the standard price; the mischaracterization is that to "prove" their point they cite only to evidence that (2) is included. They are trying to make the Commission forget the very first step: To give CLECs access to a non-IDLC loop, Ameritech Wisconsin must first convert an IDLC loop to a non-IDLC facility. That conversion cost is the only one at issue here, and it is

not – and could not be – included in the price of non-IDLC loops, which by definition do not require conversion.

(c) Should CLECs be charged special construction or any other facilities modification charges for constructing new facilities?

1. If special construction charges are appropriate, should the charges be assessed as recurring charges or nonrecurring charges?

2. If special construction charges are appropriate, is it appropriate to develop standardized rates or time and material rates?

3. How should those rates be determined?

On this issue, the CLECs try hard to avoid telling the Commission straight out what they are really asking for. Stripped of jargon and rhetoric, what the CLECs propose is this: They want Ameritech Wisconsin to build new network facilities where none exist – at their beck and call, for their use and profit, but without their paying any compensation for the work. The 1996 Act prohibits such a regime, which would transform Ameritech Wisconsin from a telecommunications company into the CLECs' captive – and uncompensated – architect, engineer, and construction contractor. As the Eighth Circuit has held, "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one." *Iowa Utilities Board I*, 120 F.3d at 813 (emphasis added).

The CLECs' rhetoric cannot change the result compelled by law. Their basic pitch is a curious one – an apparent nostalgia for the "good old days" of regulated monopoly, when Ameritech Wisconsin constructed facilities for retail customers as the carrier of last resort and received compensation via rate-of-return regulation. The short answer is that the 1996 Act changed all that, and the CLECs are here now because of that change. It is one thing to require Ameritech Wisconsin to establish facilities to provide basic service to disadvantaged customers, as the carrier of last resort. It is quite another to require Ameritech Wisconsin to construct

facilities so that a *CLEC*, which is not the carrier of last resort, can provide (and pocket the profits from) high-end advanced services.

(8) Should Ameritech Wisconsin be permitted to assess charges for costs of loop conditioning? If so:

(a) What costs of loop conditioning should be recoverable?

As often as the FCC has held that the carrier that wants the incumbent to "condition" its loops for data traffic must also reimburse the incumbent for the associated costs, the CLEC brief here tries to evade that holding. Although the FCC has plainly said that "[t]he requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning" (*First Report and Order*, ¶ 382), the CLECs want the Commission to say that "the requesting carrier *need not* bear the cost of compensating the incumbent LEC for such conditioning."

1. The Commission should first reject the CLEC view (CLEC Br. at I.C.-161-162) that recovery for conditioning would run counter to the hypothetical network assumed by TELRIC because a network built today would not include features (such as bridged tap) that inhibit data traffic. The CLECs' argument is both untrue and irrelevant. Untrue, because while features like bridged tap may inhibit some data services, they facilitate voice transmission, and a network built today still needs to carry voice services. Tr. Vol. 1 at 273-74. For this reason, current industry guidelines still call for placement of bridged tap, which is especially beneficial in low-income areas. Tr. Vol. 1 at 275. As a result, conditioning is not an upgrade from old to "latest and greatest" that benefits Ameritech, the way the CLECs portray it (CLEC Br. at I.C.-162); conditioning is a conversion from voice to data that benefits the data carrier – the CLEC – at the expense of the voice carrier, Ameritech Wisconsin.

The CLEC argument is also irrelevant, because the 1996 Act allows for recovery of conditioning loops, notwithstanding their view that voice-enhancing features are inefficient.

First, the Eighth Circuit has held that loop prices must reflect "the cost of providing the actual facilities and equipment that will be used by the competitor" rather than TELRIC (*Iowa Utilities Board III*, 219 F.3d at 751). Second, even the FCC – the architect of TELRIC – has held that incumbent LECs are entitled to conditioning. The CLEC argument here is simply a rehash of one they litigated and lost before the FCC, and a collateral attack on the FCC's decision. In its *UNE Remand Order*, the FCC expressly reaffirmed that incumbent LECs should charge for conditioning loops, even if that involves the removal of features that would not be installed if the loop were constructed using present-day technology. *UNE Remand Order*, ¶¶ 192-193:

> In the Local Competition First Report and Order, the Commission also stated that requesting carriers would compensate the incumbent LECs for the cost of conditioning the loop. Covad and Rhythms argue that, because loops under 18,000 feet generally should not require devices to enhance voice- transmission, the requesting party should not be required to compensate the incumbent for removing such devices on lines of that length or shorter.
>
> We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter. Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops. (Footnotes omitted and emphasis added.)

2. The CLECs' assertion that "SBC itself has a $0 rate for conditioning in Kansas" suffers from the same twin defects of error and irrelevancy. The CLECs' statement is irrelevant, because, to paraphrase Dorothy, we are not in Kansas. And it is untrue, because Kansas has an interim conditioning rate of $100, and its commission is now in the process of setting a permanent rate, just as this Commission is doing here. Tr. Vol. 1 at 33.

(b) What rates are reasonable for loop conditioning?

Ameritech Wisconsin's proposed prices are based on time studies of the actual tasks required to properly and safely condition a loop; they reflect extensive observation and

interviews of the field personnel that actually do the conditioning work; and they are supported by a detailed review conducted by the Staff of the Missouri commission. Tr. Vol. 1 at 35-36. By contrast, the CLECs' cost "studies" were not based on any real-world observation or experience (Tr. Vol. 1 at 35), and they omit real-world tasks. Tr. Vol. 1 at 280-284.

Further, the CLECs' proposed prices are founded on the patently erroneous assumption that conditioning prices should assume that loops are conditioned in groups of 25 or 75. In the real world, a CLEC asks Ameritech Wisconsin to condition loop "A" and Ameritech Wisconsin conditions loop "A." It would be downright silly to condition loops B through Z for data if they are still being used for voice. Tr. Vol. 1 at 279-80. The CLECs' goal is not realism but escapism: Instead of paying the full cost of conditioning the real-world loop they want conditioned, they want Ameritech to spread the cost to 74 imaginary loops – and then eat 74/75^{ths} of it. Tr. Vol. 1 at 36.

1. Should costs be recovered as recurring or nonrecurring charges?

a. Should nonrecurring charges be established to recover loop conditioning costs be applied to all UNE loop orders for which such costs are possible or only those orders on which such costs are actually incurred?

b. Should loop conditioning costs be included in maintenance factors?

With respect to timing, CLECs should pay the price for conditioning "up front" because that is when Ameritech Wisconsin incurs the cost. Ameritech Wisconsin is not a finance company for CLECs. Tr. Vol. 1 at 37. Once again, the CLECs' real goal is to collaterally attack the FCC's repeated command that they pay for the cost of conditioning. CLECs are under no obligation to keep conditioned loops (or any unbundled loops for that matter), and can discontinue their lease at any time. If conditioning costs were spread over recurring charges, the

CLEC could simply discontinue the lease shortly after entering it and thus leave Ameritech Wisconsin holding the bag.

2. Is it appropriate to establish standardized rates or time and material rates?

3. How should those rates be determined?

(9) Should Ameritech be permitted to assess costs for Loop Qualification?

(a) If so, how should the reasonableness of those costs be determined?

(b) If so, should the costs be recovered through a recurring charge or a non-recurring charge?

(c) What should those rates be?

Ameritech Wisconsin has not submitted a separate study relating to the costs it incurs in connection with loop qualification. Ameritech Wisconsin does, in fact, incur costs and is entitled to recover those costs. Ameritech Wisconsin's decision not to submit a separate study is not intended nor should it be construed to waive Ameritech Wisconsin's right to seek recovery for such costs in the future. Since Ameritech Wisconsin is not seeking recovery of such costs, it will not respond to the CLECs' briefing on this issue (CLEC Br. at I.C.-178-79), except to state that it does not agree with the CLEC Coalition's Interpretation of the FCC's regulations.

D. Switch Related Issues

(1) How should switching cost inputs be calculated?

As Ameritech Wisconsin documented extensively in its opening brief, unbundled local switching costs should be calculated using the inputs derived from ARPSM and the costs produced by NUCAT. Ameritech Wisconsin designed these models to accurately derive its switching costs from the new two-tiered contractual structure under which it buys switching. Even the CLECs agree that ARPSM and NUCAT "more accurately reflect Ameritech's current PIP contracts." CLEC Br. at I.D.-4. The CLECs do not disagree with the fundamental methodology of ARPSM and NUCAT, but ask the Commission only to give "careful scrutiny

[to] the inputs and assumptions the models contain." CLEC Br. at I.D.-5. However, it is the CLECs' criticisms of those inputs and assumptions that must be given close scrutiny. As will be shown below, once the CLECs finally get around to discussing Ameritech Wisconsin's switching costs (they begin their discussion under this issue heading by criticizing Ameritech Wisconsin's loop rates!), their specific criticisms and proposed adjustments lack any merit whatsoever.

(a) What is the appropriate contract price to use?

1. Should the prices established in current contracts be used, or would different prices be more reasonable for a complete rebuild?

There is no dispute on this issue. Both Ameritech Wisconsin and the CLECs agree that the per-line prices for replacement lines and growth lines should be taken from Ameritech's *current* contracts with its switch vendors. CLEC Br. at I.D.-13. As Ameritech Wisconsin explained in its opening brief, these contracts are the best measure of the switching prices Ameritech can be expected to pay on a forward-looking basis. AW Br. at 252-53. But, although the CLECs agree that the prices from the current contracts should be used – prices based on carefully-calibrated assumptions regarding the number of replacement and growth lines that will be placed under those contracts – they then turn around and argue that these prices (at least the replacement line prices) should be applied in ARPSM to a vast number of lines previously placed under other contracts at other I.D.-14. The flawed nature of this position is highlighted in the following section.

2. What are the appropriate numbers for growth lines versus replacement lines?

In its opening brief (AW Br. at 247-52; 253-61), Ameritech Wisconsin described at length the two-tiered contractual structure under which Ameritech currently purchases switching equipment and the ARPSM methodology. Before addressing the CLECs' lone challenge to

ARPSM – that it ignores vast numbers of replacement lines placed under old, outdated contracts – Ameritech Wisconsin believes it will be helpful to recap the discussion from its opening brief.

Ameritech has two contracts with each of its three switch vendors. One contract, the 1-A Analog Switch Replacement Contract, concerns the purchase of new digital switches that are used to replace a fixed and precise number of Ameritech's existing analog switches; the second contract, known as a PIP contract, concerns the purchase of single lines of switching – growth lines – that are added to existing or newly placed switches.

Ameritech Wisconsin explained that there is no functional difference between these two types of lines – they are identical in terms of their capabilities. AW Br. at 251. And because of this, there is really only a single cost that a vendor incurs for providing a line of switching to Ameritech, say $5 per line. But, despite this single cost to the vendor, the vendor charges a very different price for each type of line. The replacement line price is very low, often below cost; the growth price is much higher, usually well in excess of cost.

Ameritech Wisconsin explained why this is the case. AW Br. at 249-51. Due to the competitive market in which the various vendors vie for Ameritech's business, a vendor will entice Ameritech to buy its switch by offering a low price on the replacement lines, a price so low that it is often well below the actual cost of the line of switching, say $2. (Indeed, **[Begin Conf *** ********** End Conf]**). The vendor does this because it knows that once Ameritech buys its switch, Ameritech will be "locked in" to that switch and will be forced to buy growth lines for that switch from that same vendor in the future. Therefore, the vendor can (and does) charge a much higher price for growth lines. This higher growth price, say $8, covers not only the actual cost to the vendor of that line ($5), but also

recoups that portion of the actual cost of the line previously provided as a replacement line that the vendor did not recover at that time ($3) because it offered the replacement line below cost.

As Ameritech Wisconsin further explained in its opening brief (AW Br. at 249-51) and, as is clear from the above example, the replacement line price and the growth line prices are directly related. In our example, the growth line price depends on how low the vendor went in setting the replacement line price; the lower the replacement line price, the higher the growth line price must be set in order for the vendor to recover the actual cost to it of providing the lines. These two prices also depend on the number of each type of line the vendor will provide. If the vendor will provide 6 million total lines over the course of the contracts, it will (following our example), incur $30 million in actual costs. If 2 million of those lines are replacement lines, and the other 4 million are growth lines, the prices for each must (and will be) set by the vendor so that, in the aggregate, it recovers $30 million. For instance, the vendor might set the replacement price at $3 per line (resulting in a recovery of $6 million on the 2 million replacement lines) and the growth line price at $6 per line (resulting in a recovery of $24 million on the 4 million growth lines), and thus, the vendor will recover its $30 million ($6 million plus $24 million) in the aggregate.

Thus, these prices are carefully calibrated based on the number of lines the vendor will provide and so that the vendors will, over the life of the contracts, recover the total cost of the switching it provides to Ameritech (as well as earn their desired profit). Ameritech's vendors know with precise certainty how many replacement lines they will have to provide, because the replacement contracts identify the specific switches (by wire center) that will be replaced. *See* AW Ex. 133C, Tab E, Attachments C, F & I (identifying the wire center addresses at which the designated replacement switches are located and the dates by which each of those switches must

be replaced). And the vendors can predict with relative certainty how many growth lines they will be able to provide by using Ameritech's demand projections. Since the vendors know how many of each type of line they will have to (and be able to) provide over the lives of the contracts, they can (and do) set the prices for each line so that, when all is said and done, the vendor recovers the total costs (with its desired profit) for the total lines of switching it provides to Ameritech. Thus, when a vendor agrees to the replacement and growth line prices, it knows with reasonable certainty what its total costs and total revenues will be in current dollars over the life of the contracts.

Due to this two-tiered contractual structure, Ameritech Wisconsin could no longer rely on its old cost models – like the SCIS model – that were premised on entirely different buying arrangements. Instead, Ameritech was forced to design ARPSM to compute the single, average per-line price that its vendors would charge (the $5 per line in our example) for a line of switching in the absence of the two-tiered pricing structure. APRSM does this by taking the number of replacement lines fixed under the contracts and the number of growth lines projected under the contracts, and weights the prices for each according to the relative number of lines. As Ameritech Wisconsin explained in its opening brief (AW Br. at 251), this price is forward-looking because it is the cost Ameritech would incur if it went to its switch vendors today and asked them to replace the entire switch network – it is the price they would need on a per-line basis to satisfy their revenue requirements.

The CLECs' only real complaint with ARPSM lies in its weighting of replacement and growth lines.[95] The CLECs argue the price computed by ARPSM is too high because Ameritech's weighting is skewed too heavily in favor of the high-priced growth lines and does

[95] The CLECs do not dispute the number of growth lines used in ARPSM (CLEC Br. at I.D.-18).

not count enough of the less expensive replacement lines. To support this, the CLECs attempt to artificially inflate the number of less-expensive replacement lines that should be factored into ARPSM.

However, because the number of replacement lines is fixed by the replacement contracts (*see above* and AW Br. at 254), the CLECs are forced to go outside the carefully calibrated contractual structure to find their additional replacement lines. ARPSM counts only the roughly **[Begin Conf *** ********** End Conf]** replacement lines that will be placed under Ameritech's replacement contracts, but the CLECs add *another 10 million replacement lines* by injecting *all of the previously-placed replacement lines in Ameritech's network*, lines placed under old contracts that no longer exist and that contained very different prices and pricing structures than Ameritech's current contracts. CLEC Br. at I.D.-15. Worse still, the CLECs' want "to apply [Ameritech's] *current switch vendor contracts*" and the prices therein to all of these lines, even though those contracts were premised only upon a very precise number of future switching line purchases. CLEC Br. at I.D.-17 (emphasis in original).

With all due respect, the CLECs' argument is simply absurd, for two reasons.

First, simply consider what would happen under *this* proposal (Dr. Ankum makes a far more ambitious, and preposterous, proposal which will be discussed shortly). For sake of ease, we will return to our earlier example. If our vendor suddenly had to provide 10 million additional replacement lines (for a total of 12 million replacement lines and 16 million total lines) it would incur $80 million in actual costs (16 million times the actual cost of $5 per line). But it would not recover these actual costs if the old replacement and growth line prices still applied. It would only recover $36 million on the replacement lines (12 million lines times $3 per line) while still recovering $24 million on the 4 million growth lines – at total of only $60

million. The vendor would be left holding the bag of $20 million in unrecovered actual costs.

Obviously, then, the vendor would recalibrate its prices, raising either the replacement line price, the growth line price, or both so that in the aggregate, it received $80 million from Ameritech. But the CLECs want to hold the ARPSM prices constant ("'the prices contained in the switch contracts used by ARPSM . . . are the best basis for determining the forward-looking prices for switching equipment'" (CLEC Br. at I.D.-17)) after increasing the number of lines. Doing so would simply leave Ameritech holding the $20 million bag of unrecovered costs, and would result in unbundled switching prices that are substantially below-cost, and thus, in violation of §252(d) of the Act.

Dr. Ankum also advocates that under a "pure TELRIC" approach (*i.e.*, the "scorched node" approach), an efficient rational competitor would replace all of its switches in the long run, and therefore, the replacement prices would apply to *all of Ameritech's switches.*. CLEC Br. at I.D.-12; Tr. Vol. 6 at 2114. This is what would happen under that proposal: As Mr. Palmer explained, since Nortel supplies approximately **[Begin Conf *** ******** End Conf]** of Ameritech's lines, and since Nortel's replacement line price is **[Begin Conf *** ********** End Conf]**, the CLECs would have Nortel provide roughly **[Begin Conf ********** ********* End Conf]**. Tr. Conf. Vol. 3 at 517. No further discussion is necessary to show that this would never happen and that this proposal is nothing short of silly. Dr. Ankum argued that Nortel *would replace* all of Ameritech Wisconsin's switches for **[Begin Conf *** ******* End Conf]** (Tr. Conf. Vol. 9 at 2694) because Nortel would replace one switch for **[Begin Conf *** **** *** End Conf]** (because it could recoup its replacement costs in the higher growth line prices), and thus it would replace a second switch for **[Begin Conf *** ******** End Conf]** for the same reason, and so on down the line until it replaced all of Ameritech Wisconsin's switches.

But this scenario has Nortel placing *many, many* more replacement lines than the very few lines expressly identified in the contracts. Ameritech Wisconsin has just shown above that increasing the number of replacement lines above the precise number contemplated by the vendors and fixed in the contracts results in substantial under-recovery of costs. In order to maintain the same expected profit per line as it receives under the current switch contracts, Nortel would have to raise its growth line price over **[Begin Conf *** ************* End Conf]** (assuming the same growth rates). Tr. Conf. Vol. 3 at 517.[96]

The CLECs' utterly ignore the fact that the replacement line price is *tied directly to the growth line price, and to the counts of each kind of line that the vendor will have to place.* The focus should not be on the two prices as distinct, disaggregated entities. Rather, they are simply a convention that results from the competition that exists between vendors for Ameritech's business. The real focus should be on the cost to the vendor of providing switches to Ameritech, a cost that will be passed on to Ameritech. As any one of those four inputs changes, one or more of the others must change if the vendor is to recover its total costs and anticipated profits.

Second, the CLECs' (either intentionally or not) mislead the Commission when they say that Ameritech Wisconsin's switching cost study does not perform a proper TELRIC analysis. The CLECs contend Ameritech Wisconsin's study does not consider the total quantity of switching facilities (CLEC Br. at I.D.-17) because it counts only those lines of switching that will be placed in the future, and neglects nearly 14 million lines of switching already placed in the network. At the risk of beating a dead horse (*see* AW Br. at 259-260), Ameritech Wisconsin

[96] Despite trying to pull the wool over the Commission's eyes, even Dr. Ankum must eventually fess up to the fact that the replacement line price is tied to the growth line price, and that altering the number of replacement lines purchased will cause contractual prices and assumptions to change. He himself argues that the **[Begin Conf *** ****** *** End Conf]** PIP contract states that if Ameritech does not buy at least **[Begin Conf *** ******* *** End Conf]** replacement lines, the growth line price will be increased. Tr. Conf. Vol. 9 at 2629.

does compute the TELRIC of unbundling local switching. ARPSM is simply used to determine the forward-looking price of switching – the price the vendors would charge for a line of switching if Ameritech went to them today and asked them to replace all of its switches. Tr. Conf. Vol. 3 at 647. This price is then input into the NUCAT model and applied to the whole network – a network that includes *all* of Ameritech's lines of switching. Tr. Vol. 2 at 710.[97]

In short, the CLECs' proposals completely disregard the contractual structure under which Ameritech buys switches, assume that the switch vendors would *substantially* subsidize Ameritech's switch purchases by offering vast numbers of below-cost replacement lines that they are not contractually obligated to provide, and ignore the fact that ARPSM's forward-looking per-line switching price is applied to all of Ameritech's switches in accordance with TELRIC.

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[97] The CLECs also cite the Michigan Public Service Commission's decision in Case No. U-11831 for the proposition that ARPSM does not account for all lines in Ameritech Wisconsin's network as a proper TELRIC model should. CLEC Br. at I.D.-10-11. Ameritech Wisconsin respectfully submits that, for the reasons discussed, the MPSC erred in its understanding of ARPSM. The MPSC revised ARPSM in that case because it believed that ARPSM does not "price the cost of serving the entire current demand." *MPSC Opinion and Order*, Docket No. U-11831 (Nov. 16, 1999), at 14. It is true that ARPSM does not develop the cost of serving the entire current demand. But ARPSM is not a TELRIC model. NUCAT is.

The CLECs' reliance on *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F. Supp.2d 218 (D. Del. 2000) is also misplaced. First, the CLECs assume that the relevant terms of the switch procurement contracts in *McMahon* are the same as those in Ameritech's switching contracts. There is no basis for this assumption (and the CLECs certainly do not provide any). For instance, *McMahon* refers to "bulk-rate" discounts in the contracts. *McMahon*, 80 F. Supp.2d at 239. But Ameritech's contracts contain no such discounts; rather the provide fixed, albeit different, prices for growth and replacement lines. Second, it appears that Bell Atlantic based its cost estimates only upon small discounts it received for "add-in" cards to augment its switches and did not include larger discounts for bulk purchases. In contrast, ARPSM *does* incorporate the discounted replacement line price Ameritech receives from its vendors. Third, *McMahon* was based on Bell Atlantic's use of Bellcore's SCIS switching model, which is substantially different than ARPSM. Finally, *McMahon* upheld the Delaware Public Service Commission's order under the arbitrary and capricious standard of review, an extremely generous standard.

3. What are the appropriate order intervals?

Ameritech Wisconsin agrees with Dr. Ankum that the Lucent ordering interval should be **[Begin Conf *** ********** End Conf]**. Tr. Conf. Vol. 3 at 643. The CLECs agree with all of the other ordering intervals used by Ameritech Wisconsin.

4. What blending of switch types and manufacturers should be used?

Ameritech Wisconsin explained at page 261 of its opening brief the blend and weightings of switch types and manufactures used in ARPSM, how it arrived at those blends and weightings, and why they are proper. The CLECs do not contest these figures. CLEC Br. at I.D.-19.[98] Ameritech Wisconsin's figures should therefore be adopted.

5. Does the mix of analog and digital lines impact switching costs, and if so, what is the appropriate mix assuming that switching costs are recovered in port charges?

As Ameritech Wisconsin explained in its opening brief (AW Br. at 262-63), the prices for analog replacement and growth lines and for digital replacement and growth lines differ. Thus, the mix of analog and digital lines impacts the weighted average price per line computed by ARPSM. Ameritech Wisconsin based its mix of analog and digital lines on the mix and prices of analog and digital replacement lines provided in the replacement contracts, and on the mix and prices of analog and digital growth lines provided in the PIP contracts. Ameritech Wisconsin did so because, as was the case with the replacement/growth line mix, the prices for analog and

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[98] The CLECs do argue in this portion of their brief that although Ameritech Wisconsin's switch blends are proper, Ameritech Wisconsin's ordering intervals and growth and replacement line counts should not be used. Ameritech Wisconsin has already responded to these arguments. The CLECs also argue ARPSM should consider "applicable vendor discounts and incentives." CLEC Br. at I.D.-19. While the CLECs do point elsewhere in their brief to discount provisions in Ameritech's DLC contract with Alcatel (although they never show those provision will be triggered), they point to no such provisions in Ameritech's switching contracts, or how such provisions act to reduce Ameritech's switching costs.

digital lines agreed to by the vendors were based on certain assumptions about how many of each kind of line Ameritech will buy.

The CLECs argue Ameritech Wisconsin should assume a higher percentage of digital lines because more lines will be served by DLC systems on a forward-looking basis. But just as in the case of the replacement/growth line weightings, Ameritech Wisconsin incurs its switching costs based on the actual mixes and prices set forth in the contracts, not on some arbitrary and hypothetical mix of lines. Different prices would have resulted if a higher number of digital lines was assumed.

The proper analog/digital line mixes and weightings in ARPSM are those provided on page 262 of Ameritech Wisconsin's opening brief. They are the ones that should be adopted by the Commission because they are the ones based on the prices actually paid by Ameritech.

6. What are the appropriate fill factors?

At pages 263-265 of its opening brief, Ameritech Wisconsin listed the elements to which it applied fill factors in its unbundled local switching study, what those fill factors are, how it arrived at those fill factors, and why they are reasonable.

The CLECs attack these fills on the general grounds that actual fill factors should not, in principle, be used and that actual fill factors contain excessive amounts of spare facilities. Ameritech Wisconsin has already rebutted these baseless propositions in section I.C.(2)(a) above. The primary argument raised by the CLECs that is specific to Ameritech Wisconsin's switching fills is their critique of Ameritech Wisconsin's fill factor for CCS-related costs. Their argument on this point is simply that Ameritech does not incur usage-based costs; therefore there is nothing to apply a fill factor to. CLEC Br. at I.D.-23. As discussed at pages 268-275 of its opening brief, and in section I.D.(2)(a) below, Ameritech Wisconsin *does* incur usage-based costs, and Ameritech Wisconsin applied the CCS-related fill factor because the usage-based CCS

costs extracted from the per-line prices must be fill adjusted; otherwise, the costs of the non-usage sensitive line termination portion of the per-line price would be overstated. AW Br. at 265.

The CLECs offer no real alternative to Ameritech Wisconsin's switching fill factors, aside from proposing a fill factor of 100% – essentially no factor at all – for both the line side and the trunk side ports of the switch. CLEC Br. at I.E.-2. The absurdity of this position is evident as soon as it is stated: no piece of equipment or facility – even switching and the associated central office equipment – is ever utilized at 100% continuously over the long term. Tr. Vol. 2 at 701-02. The actual fill factor for line side ports is **[Begin Conf *** ******* End Conf]**. It is less than 100% because, as Ameritech Wisconsin explained, two separate factors are applied to the DS-1 digital line port to account for how it is actually used in the switch: (1) a "DS-1" administration factor is first applied to the DS-1 to account for those individual DS-0 channels within the DS-1 that are not and cannot be used for service, and then (2) a separate fill factor for the demultiplexing equipment in the switch that converts the DS-1 signal into individual DS-0 signals – the "DS1/DS0 Mux" – must be applied. AW Br. at 264. The CLECs assert that Ameritech Wisconsin does not buy switches many years in advance of demand because it buys its switches under "short" delivery intervals, and thus, the fill factor for line-side switch ports should be 100% because there are no spare switching facilities lying around. But it is clear from the above discussion that the line side fill factor results from the inability of the DS-1 line to be 100% utilized (because some of its DS-0 channels *cannot* be used for service) and from the internal demultiplexing mechanics of the switch. The fill factor has nothing to do with how the switches are deployed in the network, or how many "spare" switches there may or may not be.

The CLECs' proposal is sheer fantasy. It is completely divorced from reality and from the requirement in ¶ 682 of the *First Report and Order* that fill factors represent "a reasonable projection of the actual total usage of the element." It should therefore be rejected.

7. What depreciation lives and salvage factors should be used?

As Ameritech Wisconsin explained in its opening brief (AW Br. at 265-66), it applied a depreciation life of **[Begin Conf *** ***** End Conf]** years. This life is derived from and is fully consistent with the forward-looking switch equipment depreciation lives adopted by this Commission in Docket 05-DT-102, and therefore should be adopted here as well.

The CLECs argue that because the FCC requires the use of consistent costing technologies for determining universal service support fees and the costs of the UNEs, the Commission should adopt here the FCC's economic lives used in the universal service fund cost studies. However, that leaves the Commission nowhere to go because the Commission, in its 05-TI-160 USF cost order, decided not to adopt a USF cost study.

The CLECs also argue the economic life for switches proposed by Ameritech cannot be as short as **[Begin Conf *** ****** End Conf]** years because Ameritech's switch deployment schedules show the same type of Nortel switch being deployed in 1997 and 2003. CLEC Br. at I.D.-24. Because the same type of switch will be deployed at the beginning and end of this 7-year period, they conclude that the switches "will be around for a significant period" and will therefore have long economic lives. *Id.* This is nothing but smoke and mirrors. As Mr. Palmer explained, an economic life is a theoretical concept and is an *average* of the lives of *all* switches. Tr. Conf. Vol. 3 at 545. Because it is an average, some switches will have lives longer than average, and other will have lives shorter than the average. Simply pointing to the life of *one* particular switch, which is all the CLECs can do, does nothing to undercut the accuracy of this average economic life. In sum, the CLECs fall far short of providing even a remotely-

compelling reason for the Commission to abandon the **[Begin Conf *** ***** End Conf]** year economic life it has already adopted.

8. What maintenance factors should be used?

The CLECs do not raise any specific challenge to Ameritech Wisconsin's switch maintenance factors. Instead, they simply repeat Mr. Behounek's critique of the general methodology used by Ameritech Wisconsin to compute those factors. Ameritech Wisconsin has already shown why its methodology and resulting factors are reasonable and why Mr. Behounek's recommendations cannot be given any credence. *See* AW Br. at 54-55; I.C.(1)(2)(b) *infra*. Therefore, Ameritech Wisconsin's switch maintenance factors should be adopted.

9. How should the cost of right-to-use fees be addressed?

Ameritech Wisconsin explained at page 266 of its opening brief how it calculated RTU fees and why they are proper. The CLECs raise only one argument against these fees: they assert that RTU fees appear in the contracts only for replacement lines, but that Ameritech Wisconsin spreads RTU fees across all lines. They insinuate that Ameritech Wisconsin seeks to recover these fees for lines on which they are not assessed by the vendors. However, ARPSM computes a single, average price-per line. It does not compute a separate average price for replacement lines and for growth lines. Therefore, even though vendors assess the fees only on replacement lines, those fees must be spread (not duplicated) across all lines so that they can be recovered in ARPSM-calculated price. As Mr. Palmer explained, when computing the weighted average RTU fee, the price weighting for growth lines was set at zero. Tr. Vol. 2 at 704. Thus, no RTU fees were improperly attributed to growth lines, and ARPSM does not recover any RTU fees for growth lines.

10. Should the revenue ready fees be used as inputs in the model and, if so, how?

At pages 267-68 of its opening brief, Ameritech Wisconsin explained how it incurs revenue ready ("RR") fees, how it recovers them in its switching cost study, and why their recovery is proper. The CLECs' raise only one nit with Ameritech Wisconsin's calculations on this score: they claim in a single sentence that the revenue ready fees should not be "levelized." CLEC Br. at I.D.-26. However, the CLECs offer absolutely no alternative. Ameritech Wisconsin explained that it levelizes RR fees over the long term because the **[Begin Conf *** ******************* End Conf]** contracts specify different fees for each year. Tr. Vol. 2 at 705. This is wholly proper in a TELRIC study, and therefore, Ameritech Wisconsin's revenue-ready fees should be adopted.

11. Should the "in-plant" factors that Ameritech uses be used as inputs in the model and, if so, how, or are all installation costs included in the contract price for the switch?

The only argument raised by the CLECs against Ameritech Wisconsin's switching in-plant factors is their argument (addressed in section I.C.(2)(d) above) that Ameritech Wisconsin's in-plant factors for DLC equipment under its contract with Alactel are improper. However, Ameritech's DLC in-plant factors have nothing to do with its switch in-plant factors; each is contract-specific. Therefore, as explained at pages 267-68 of its opening brief, Ameritech Wisconsin's switch in-plant factors should be adopted.

(2) Line Port issues

(a) Should usage charges apply in addition to a per-port charge?

1. What costs vary with usage?

2. What costs do not vary with usage?

There is no dispute that the switch imposes two kinds of investment costs: one for the line port and one for the switch "matrix" – the equipment inside the switch that transmits the signal from the line port on one side, through the switch, and to the trunk port on the other side

(or *vice versa*). Reply Appendix, Tab K, at 320-21 (Testimony of Dr. Ankum in ICC Docket No. 00-0700, June 28, 2001). The CLECs agree that it is appropriate for Ameritech Wisconsin to charge a flat rate for the line port, since it is dedicated to a particular user. But the parties vigorously disagree as to how the investment costs for the switch matrix should be recovered.

The switch matrix is not dedicated to any one user, but is a shared facility. *First Report and Order*, ¶ 810. And its users do not use it equally; some users, such as large businesses, use it much more than others, such as residential customers. Whomever the customer, usage of the switch consumes the switch's resources – its capacity to carry traffic. More usage consumes more resources and yields increased investment costs caused by and attributable to that usage. For Ameritech Wisconsin to recover its costs and ensure that each user pays for the costs it causes, the Commission should adopt Ameritech Illinois' bifurcated rate structure that contains both a flat-rate charge for the cost of the dedicated line port, and a small usage-based (MOU) charge for the cost of using the switching capacity of the switch. This proposal is the only one offered that allows Ameritech Wisconsin to fully recover its switching costs.

The CLECs stand virtually alone in their assertion that Ameritech Wisconsin does not incur usage-based switching costs. The FCC recognizes and mandates (AW Br. at 268-69) that ILECs charge "a combination of a flat-rated charge for line ports, which are dedicated to a single new entrant, and either a flat-rate *or per minute usage* charge for the switching matrix and trunk ports, which constitute shared facilities" because it "best reflects the way costs for unbundled local switching are incurred." *First Report and Order*, ¶ 810; 47 C.F.R. § 51.509(b) (emphasis added). Moreover, 49 (including Wisconsin) out the 50 states agree. The Public Service Commission of West Virginia has recently completed and released a survey of UNE prices in each of the fifty states. *See* Reply Appendix, Tab L. A quick review of the columns entitled

"Port Rate" and "Switching" of Table 1 of that survey reveals that *every state except Illinois* has adopted a bifurcated rate structure establishing a flat monthly rate for the "port," and a per-MOU (*i.e.*, usage-sensitive) monthly rate for the "switching" function of the switch. While Dr. Ankum may believe that a usage-sensitive rate element is not necessary to recover usage costs, the FCC and 49 State commissions plainly disagree.

And while Illinois has bucked the trend and adopted a pure flat rate for local switching, it must be mentioned that the Illinois flat rate is only an interim rate and is **[Begin Conf *** ***** ****** *** End Conf]** the rate proposed here by Dr. Ankum: $5.01 per port in Illinois compared to his **[Begin Conf *** ***** *** End Conf]**. CLEC Br. at I.D.-31; Tr. Vol. 6 at 2362. Moreover, the Illinois Commerce Commission is currently considering in Docket No. 00-0700 whether to abandon that rate structure and adopt instead the kind of bifurcated rate proposed by Ameritech Wisconsin.

If the CLECs' "usage for free" proposal were adopted, the CLECs could target only high usage customers. But Ameritech Wisconsin does not have that luxury; it must serve *all* customers. Thus, Ameritech Wisconsin and its low-usage customers would be forced to subsidize the CLECs' high-use customers.

This is obviously the CLECs' plan. The CLECs' principal customers are and will be high-use customers – medium and large businesses. As the FCC has recently recognized in its Local Telephone Competition Status Report, 60% of CLEC customers nationwide are medium and large businesses, institutional, and government customers. Reply Appendix, Tab M at 1. That number is even higher in Wisconsin: here, 69% of CLEC customers are medium and large businesses and other institutional customers. *Id.* at Table 8. In contrast, less than 20% of ILEC

customers nationwide are medium and large businesses, and only 17% are in Wisconsin. *Id.* at 1 & Table 8.

These high-use business customers make much greater use of the shared switching equipment and use more of the switch's capacity than does the average Ameritech Wisconsin customer. Moreover, these CLEC business customers will use the switch primarily at peak times – *i.e.*, business hours. And if usage is free (as it is under the CLECs' proposal), then one can expect peak usage will be greater than it otherwise would be (since free resources tend to be overused). Because peak-time usage contributes to exhaustion of the shared switching matrix and drives the decision of how much capacity to build into a switch to handle that usage (and thus, how much the switch costs), CLEC usage in this manner clearly causes switch investment costs, costs which will be borne by Ameritech Wisconsin alone under the CLECs' proposal.[99]

These costs will be borne by Ameritech Wisconsin in at least two ways. First, consider the case where Ameritech's switch is unable to handle the increased usage caused by the CLECs' high-volume users. As Ameritech Wisconsin has already explained in detail (AW Br. at 272-74), it will be necessary to add equipment to the switch to increase its capacity. These additions are therefore clearly usage-driven. Even if the vendors install this equipment themselves and do not charge Ameritech Wisconsin for the equipment at that time, Ameritech Wisconsin will still bear the cost of these additions in the future when the contracts come up for renegotiation and the vendors pass on those costs in the form of higher prices. AW Br. at 272-74. Dr. Ankum himself acknowledged this. Tr. Conf. Vol. 3 at 526. During the interim, however, the CLECs would be locked into a low flat rate based on outdated usage assumptions, a rate that would leave the CLECs paying less for the costs of their usage. AW Br. at 272-74. When it comes time to

[99] Thus, the statements by Mr. Palmer and Dr. Aron (cited by the CLECs on pages 35-36 of their brief) regarding "normal" switch usage are inapposite.

pass on the cost of the switch upgrades, Ameritech Wisconsin could (under the CLECs' proposal) break down that cost evenly and charge every customer the same amount in a higher flat rate. But this would leave the small business and residential customers – Ameritech Wisconsin's primary customers – paying more than their fair share and subsidizing the higher usage of the CLECs' customers. This is because it is the CLECs' high-usage customers who primarily (or at least, disproportionately) cause Ameritech Wisconsin to incur the costs of the added switch equipment (which it turn causes the monthly flat rate to be higher).

And even where Ameritech Wisconsin correctly anticipates the required CCS capacity and chooses therefore to buy a "large" switch with enough capacity to handle the usage level in issue, it would still be unfair to pass on the costs of that switch to all customers equally through a flat rate. Just as in the preceding scenario, it is the CLECs' high-use customers that disproportionately force Ameritech Wisconsin to incur these additional switching costs. These incremental switch investments are caused disproportionately by the CLECs' customers, and should therefore be borne by them in proportion with their usage and consumption of the investment. This will occur only if the CLECs are required to pay a usage-based rate.

The CLECs have offered nothing that undercuts this proposal (aside from turning a complete about-face from their position on the ARPSM line-weighting issue) and arguing (1) that the terms of the switch vendor contracts must be rigidly adhered to, (2) the terms contain no provisions regarding usage-based charges, and thus, (3) Ameritech Wisconsin incurs no usage-based costs. As Ameritech Wisconsin has already documented, those contracts *do* contain provisions imposing usage-based charges (the CCS-job provisions). AW Br. at 274-75. But more importantly, the capacity of the shared switch equipment imposes an investment cost on Ameritech Wisconsin. Even Illinois – the sole state that currently has a simple flat rated port

charge for ULS – recognizes that. "CCS [*i.e.*, usage]-related costs are necessarily incurred in any forward-looking unbundled switch design." Second Interim Order (Ill. Commerce Commission), Docket 96-0486/0569 (Feb. 17, 1998), at p. 59. The only issue is how this cost should be recovered. The CLECs' position boils down to the proposition that it should be recovered through a simple flat rate charge per port that applies equally to each port, no matter how much or how little usage is generated by that port. This is inconsistent with basic principles of cost causation. And it results in low-usage customers (*i.e.*, the average Ameritech Wisconsin customer) subsidizing the large-usage customers (*i.e.*, the average CLEC customer).

(b) **What are the standard features that should be included in the cost of a basic port and how are the costs for these features to be calculated?**

(c) **Is it appropriate to load the costs for the following items onto the port and, if so, have the costs been appropriately calculated in Ameritech's model?**

1. **Main distribution frame**
2. **Telephone number**
3. **Call intercept**
4. **Directories**
5. **Methods and procedures development**
6. **Report processing**
7. **Billing systems development**

As Ameritech Wisconsin explained (AW Br. at 275-76), the overall TELRIC of the unbundled port should contain the costs of each of the components and features listed by Staff above. The CLECs agree with Ameritech Wisconsin on the features that must be included in the cost of a basic port. CLEC Br. at I.D.-40-41.

(d) **What are the cost differences between different types of ports and the basic port and how should these costs be calculated?**

As shown in Ameritech Wisconsin's unbundled local switching cost study and in Exhibit 23C, there are significant cost difference between the port types analyzed by Ameritech Wisconsin. Although the CLECs contest the cost of the basic port on multiple grounds, they do not contest the costs associated with the remaining port types. CLEC Br. at I.D.-41. The costs calculated by Ameritech Wisconsin for those remaining port types should therefore be adopted.

(3) What adjustments need to be made to calculate tandem switching costs?

Ameritech Wisconsin discussed its tandem switching rate, which is costed on a usage-based, MOU basis, at page 277 of its opening brief. The CLECs do not challenge this rate. It should therefore be adopted.

Under this issue heading in their opening brief, the CLECs argue Ameritech Wisconsin's blended transport rates are too high because they incorporate inflated distance assumptions and too much tandem switching. This is not a tandem switching issue, but a shared transport issue. Therefore, Ameritech Wisconsin responds to this charge under section I.E.(3)(c) below.

E. Transport Related Issues

(1) Trunk Port Issues

Trunk ports, like line ports, are priced on a per-port basis under the switch vendor contracts, and, thus, Ameritech Wisconsin used ARPSM to calculate its forward-looking trunk investments. AW Br. at 277. The single, per-port price computed by ARPSM is then multiplied by the number of trunk ports needed on a forward-looking basis to determine Ameritech Wisconsin's total forward-looking trunk investments. *Id.* at 278. Ameritech Wisconsin's proposed trunk port rate is reasonable and should be adopted. In contrast, the rate advocated by the CLECs and Dr. Ankum *substantially understates* Ameritech Wisconsin's costs. As Dr. Ankum recently admitted in an Illinois proceeding involving the same trunk investment and shared transport rate issues here, he made a mistake there that, when corrected, caused his

proposed shared transport rate to more than double. Reply Appendix, Tab K, at 333-35. Dr. Ankum also admitted that he has not yet made similar corrections to his calculations used in this proceeding, calculations using the same flawed methodology. *Id.* at 335. The Commission should therefore discount entirely the CLECs' and Dr. Ankum's proposed shared transport rates.

(a) What fill factors are appropriate to convert DS-1's to DS-0's?

Ameritech Wisconsin discussed at page 278 of its opening brief the process by which the DS-1 trunk prices are converted to a DS-0 basis for purposes of its cost study. The CLECs do not challenge this approach. Instead, the CLECs argue Ameritech Wisconsin's trunk port fill factor should be 100% – again, just like the line side port fill factor, essentially no fill factor at all. CLEC Br. at I.E.-2. Ameritech Wisconsin has already responded in large part to this preposterous proposal under Issue I.D.(1)(a)(6) above. Ameritech Wisconsin's actual fill factor for trunk ports is **[Begin Conf *** ******* End Conf].** AW Br. at 278. It is an *extremely* favorable fill factor as far as the CLECs are concerned (because the higher the fill, the lower the costs). It should therefore be adopted.

(b) What growth estimates are appropriate?

Ameritech Wisconsin calculates its forward-looking trunk costs by multiplying the single average price per trunk port calculated by ARPSM by the number of trunk ports it anticipates it will add in the future. AW Br. at 278. The number of trunk ports Ameritech Wisconsin anticipates it will add on a forward-looking basis is best gauged by the amount of forward-looking inter-office usage, and not by the number of growth lines anticipated. (*See* AW Br. at 278.) The CLECs agree with Ameritech Wisconsin that this is the methodology that should be used. Tr. Vol. 6 at 2295-96.

(c) How should the equipment from different vendors be blended together?

The switching equipment from the different vendors should be blended in the same proportion as it is currently deployed in Ameritech Wisconsin's network. AW Br. at 279. The CLECs agree with Ameritech Wisconsin on this point; they admit that they "have not specifically attacked ARPSM's weighting of Lucent, Nortel and Siemens switches or proposed their own alternative equipment blend." CLEC Br. at I.E.-3.

(d) What blend of cutover and growth lines is appropriate for trunks?

Ameritech Wisconsin no longer uses its growth line projections as a proxy for how many trunk ports it will buy on a forward-looking basis; instead, it agrees with the CLECs that inter-office usage is the best measure of that quantity. AW Br. at 279. Thus, the growth line/replacement line ratio used for line side ports is not relevant to determining what weighting should be given to the contractual prices for growth trunk side ports. *Id.* Rather, that weighting is determined by the number of growth trunk ports projected on the basis of the amount of interoffice usage. *Id.*

Ameritech Wisconsin has already explained in detail (AW Br. at 279-80) the resulting methodology used to determine the single, average per-trunk port price, and why this methodology is appropriate.

(2) What are the cost components of dedicated transport and how are these costs calculated?

(a) What are the forward-looking technologies and equipment configurations to use?

The technologies and equipment configurations used by Ameritech Wisconsin for dedicated transport are the appropriate ones to use. The CLECs' agree that "[t]he various cost components for dedicated transport outlined in Ameritech Wisconsin's cost studies are

appropriate," and state that they "have not submitted testimony" on this issue. CLEC Br. at I.E.-4.[100]

(b) What costs are incurred for customized routing?

The CLECs "have not presented testimony on this subject" and do not appear to be at odds with Ameritech Wisconsin on this issue. CLEC Br. at I.E.-4. Ameritech Wisconsin's dedicated transport rates stand uncontested and should be adopted by the Commission.

(c) What loadings onto the costs are appropriate to calculate a price?

For the reasons discussed in section I.B.(2) of this brief and the corresponding section in Ameritech Wisconsin's opening brief, Ameritech Wisconsin's joint and common cost loading factor is appropriate and should be adopted by the Commission.

(3) What are the costs components for shared or common transport and how are these calculated?

The CLECs' proposed shared transport rates should be discounted entirely for the reason discussed above under Issue I.E(1): Dr. Ankum admits his rates are based on a flawed methodology that he has not yet corrected.

(a) What, if any costs differ from dedicated transport?

Ameritech Wisconsin explained at page 280 of its opening brief how shared transport differs from dedicated transport, and why the costs for each differ: shared transport costs are recovered on a usage-sensitive basis, while dedicated transport cost are recovered on a flat-rate basis. The CLECs raise no specific objections to these points, and in fact agree with them. CLEC Br. at I.E.-6. However, the CLECs do repeat (again) their litany of general objections to Ameritech Wisconsin's switching studies. CLEC Br. at I.E.-5. These objections have been

[100] In light of the CLECs' approval of Ameritech Wisconsin's dedicated transport technologies and configurations, and their admission that they have not submitted testimony on the issue, the CLECs' additional statement that the Commission should consider the adjustments made to these configurations by Mr. Starkey (CLEC Br. at I.E.-4) is puzzling.

addressed and refuted by Ameritech Wisconsin in the preceding sections of this portion of this reply brief.

(b) What loadings onto the costs are appropriate to calculate a price?

For the reasons discussed in section I.B.(2) of this brief and the corresponding section in Ameritech Wisconsin's opening brief, Ameritech Wisconsin's joint and common cost loading factor is appropriate and should be adopted by the Commission.

(c) How should the cost of shared transport be recovered?

The CLECs endorse Ameritech Wisconsin's recovery of shared transport costs on a usage-based, MOU basis. CLEC Br. at I.E.-6. However, as explained in Ameritech Wisconsin's opening brief (AW Br. at 281), the CLECs do raise one quibble with Ameritech Wisconsin's shared transport rate: they believe it is too high because it is based on an average call distance that is allegedly overstated. The CLECs' outline the particulars of their position on this point at pages I.D.-42-44 of their opening brief, but Ameritech Wisconsin thoroughly rebutted these concerns at pages 281-83 of its opening brief, and will not repeat them here. In short, Ameritech Wisconsin established there that the CLECs' concerns are meritless, and that even if they did hold water, it would not make any difference – because the amount of any alleged overstatement in call distance is so negligible that it gets lost in the rounding performed in the cost study.

(4) Based on the terms of the dark fiber offering as agreed to in the stipulation in the OSS case (6720-TI-160), what are the cost components for dark fiber, how are these costs calculated and what is the appropriate price?

At pages 283-84 of its opening brief, Ameritech Wisconsin discussed in detail the methodology underlying its dark fiber cost study and why this methodology, and the resulting prices, are appropriate. The CLECs have not submitted testimony on and do not appear to be at odds with Ameritech Wisconsin on this issue. CLEC Br. at I.E.-6. Ameritech Wisconsin's dark fiber cost study should therefore be adopted.

(a) What cost factors differ from dedicated transport?

The difference in the cost of dark fiber and dedicated transport results primarily from the fact dark fiber is not connected to the electronics that render it capable of providing telecommunications services. The cost of the electronics necessary to "light" the dark fiber must therefore be included in the dark fiber cost study. The CLECs agree with Ameritech Wisconsin on this point. CLEC Br. at I.E.-7.

(b) What criteria should be used to determine when dark fiber must be made available?

As noted by Ameritech Wisconsin at page 284 of its opening brief, the criteria governing the circumstances under which Ameritech Wisconsin must provide dark fiber were not litigated in this proceeding. They were, however, litigated in the AT&T arbitration last year, and, if the Commission wishes to address this issue, it should simply reaffirm the relevant findings and conclusions from the arbitration award in that proceeding.

(c) What loadings onto the costs are appropriate to calculate a price?

For the reasons discussed in section I.B.(2) of this brief and the corresponding section in Ameritech Wisconsin's opening brief, Ameritech Wisconsin's joint and common cost loading factor and is appropriate and should be adopted by the Commission.

(d) How should the rates be determined?

Ameritech Wisconsin determined its dark fiber rates using the methodology described at pages 283-84 of its opening brief. That methodology and the resulting rates are reasonable, and have not been the subject of CLEC opposition. CLEC Br. at I.E.-8.

F. How Should Switching and Termination Costs Be Allocated Between Setup And Usage For Reciprocal Compensation?

Switching and termination costs should be allocated consistent with the Commission's Order in Docket No. 05-TI-283 ("Order"). Ameritech Wisconsin has proposed reciprocal

compensation rates that are consistent with this Order, bifurcated rates that reflect setup and usage costs. Ameritech Wisconsin's proposed rates are an accurate representation of actually-incurred costs, unlike the existing unitary rate, which is based on an average call length devised prior to widespread growth in Internet usage. This growth has dramatically increased the average call length, which has caused the existing rate to grossly overrecover actual costs. This is the circumstance that led the Commission to adopt its Order. *See* Order at 12. The FCC confirmed the wisdom of the Commission's action in its recent order on intercarrier compensation for ISP-bound traffic, recognizing the fundamental changes increased Internet usage have brought to telecommunications and how that has distorted call termination costs and rates.[101]

The CLECs don't propose rates of their own. Instead, they urge the Commission to reject Ameritech's proposal in its entirety and to maintain the existing status quo, *i.e.*, the flawed unitary rate. It is noteworthy that the CLECs do not dispute that existing rates have become unhinged from costs in a very fundamental way. Whether one calls it the result of "an inappropriate assumption regarding the length of a local telephone call" (Order at 12) or "regulatory arbitrage" (*see generally* Intercarrier Compensation Order), existing reciprocal compensation rates in Wisconsin plainly and substantially overcompensate the terminating carrier – particularly in the case of ISP-bound traffic. Order at 13. The CLECs nevertheless argue that status quo should be maintained, notwithstanding that it clashes directly with the Commission Order. The reason is clear: they want desperately to preserve the boondoggle that has given them such a hefty reciprocal compensation windfall.

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[101] FCC 01-131, *In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, released April 27, 2001 ("Intercarrier Compensation Order").

The CLECs manufacture an argument in favor of the status quo by focusing on a single component of Ameritech's set up costs, the non-conversation time ("NCT") factor. CLEC Br. at I.F.-3. The CLECs do not object to any other call set up cost component or to the duration rate at all. Nevertheless, in a transparent (and we believe desperate) effort to preserve the status quo, the CLECs assert that "Ameritech has utterly failed to properly establish those costs which are related to setup and those which are related to usage" (CLEC Br. at I.F.-1) and on that basis ask the Commission to simply reinstate the status quo. This ploy should be seen for what it is and rejected.

Moreover, their attack on NCT is itself without merit. NCT occurs each time a call is attempted, whether the call is completed or not. It is not in any way dependent on the call's duration. It does, undisputedly, entail a cost: switch equipment is used, connections established, etc. Accordingly, if this cost is to be recovered at all, it *must* be recovered in the call setup rate. Tr. Vol. 2 at 878-882. To arrive at the amount, Ameritech uses a generally accepted NCT factor to allocate a portion of its switch investment to this function. *Id.*

The bottom line: Ameritech has complied with the letter and spirit of the Commission's Order and its rates should be adopted.[6]

(1) Should switching costs be recovered in a different manner for unbundled switching than for the switching portion of reciprocal compensation?

The CLECs do not address this issue in their Initial Brief. Further, both Ameritech Wisconsin and the CLECs agree that recovery for reciprocal compensation costs should be

[6] Even if the Commission were to agree with Dr. Ankum and the CLECs that there is something wrong with the NCT cost component, the appropriate solution would not be to throw out Ameritech's entire proposal and reinstate the CLEC boondoggle. Rather, the solution would be to delete the NCT from the set up cost, and leave the duration rate as it is.

consistent with "the Commission's order in Docket No. 6720-TI-160." CLEC Br. at I.F.-1. Accordingly, Ameritech Wisconsin rests on its Initial Brief (at p. 286).

(2) What are the appropriate setup costs?

Ameritech Wisconsin rests on its Initial Brief (at p. 286), that the appropriate setup costs are set forth in Exhibit 23C.

(3) What are the appropriate duration costs?

Ameritech Wisconsin rests on its Initial Brief (at p. 286), that the appropriate duration costs are set forth in Exhibit 23C.

(4) What loadings onto the setup and duration costs are appropriate to determine prices?

The CLECs fail to address this issue in their brief. Accordingly, Ameritech Wisconsin rests on its Initial Brief (at p. 286), that the appropriate joint and common cost loadings are those generated by Ameritech Wisconsin's joint and common cost model, discussed *supra* in section I.B.(2).

G. Nonrecurring Costs Issues/Costs Associated With Initiating, Discontinuing And General Provisioning Related Issues

(1) Whose nonrecurring cost model should be used, Ameritech's model or the CLEC's model (NRCM)? Include supporting reasons based on identified strengths and weaknesses of the two models.

AMERITECH WISCONSIN'S NONRECURRING COST MODEL SHOULD BE APPROVED BY THE COMMISSION

The parties agree on the core methodology for calculating nonrecurring costs. *Compare* CLEC Br. at I.G.-10 with AW Br. at 287.[102] Both identify work activities, develop the activity times necessary to perform these work activities, estimate the probability of certain activities

[102] This is not to say that Ameritech Wisconsin concurs with the CLECs "undisputed cost model assumptions and principles." CLEC Br. at I.G.-2. These assumptions and principles are riddled with errors and inconsistencies, each of which shall be addressed below in the appropriate section.

being performed, and utilize the appropriate labor rate for the time needed to complete the activity. *Compare id.* This methodology is straightforward and leaves little room for disagreement.

Nevertheless, there remains stark disagreement between the parties, centering on the appropriate inputs and their underlying assumptions to use in a nonrecurring cost model. What this Commission must determine, based on the record developed in this proceeding, is which model's inputs are consistent with the forward-looking requirements of the Act. Based on the record before this Commission, the answer is clear: only Ameritech Wisconsin's inputs and their underlying assumptions satisfy the requirements of the Act.

Consider, first, two pivotal inputs: *activity times* and *flow-through assumptions.*

Ameritech Wisconsin's model utilizes *activity times* identified from various studies, including time and motion studies, of the activities actually being performed by Ameritech Wisconsin in the field. On the other hand, the CLEC NRCM relies on guesswork by its experts who did not even observe technicians (whether ILEC or CLEC technicians) perform some of the tasks to arrive at time estimates, much less perform any time and motion studies themselves. *See* CLEC Br. at I.G.-10. The fantasy of the NRCM activity times grows even more apparent when they are compared to AT&T's own figures in its TOC studies, which arrive at activity times comparable to Ameritech Wisconsin's for comparable activities. *See* AW Br. at 294.

Likewise, Ameritech Wisconsin's model uses *flow-through assumptions* for ordering and provisioning UNEs based on Ameritech Wisconsin's actual network and experience, achieving results consistent with those found in other states. *See, e.g.,* Tr. Vol. 6 at 1585-86 (independent third party OSS testing from New York State found that only 60.4% of all UNE orders flowed through the system without manual intervention). On the other hand, the NRCM relies on a

single, across-the-board flow-through figure that fails to take into account the differences in UNEs that require manual intervention. *See* CLEC Br. at I.G.-8-9, 11-12, 24-25. Further still, AT&T's own TOC studies achieve flow-through results comparable with those developed by Ameritech Wisconsin's model, not with those now advocated by AT&T and its CLEC cohorts. *See* AW Br. at 299-300. Yet the CLECs do not even acknowledge the TOC studies, let alone explain why they were not used.

On these key issues, the Commission is left with the following choice.

- adopt the well-reasoned, studied activity times and flow-through assumptions of Ameritech Wisconsin, which are consistent with other forward-looking networks; or

- adopt speculative, unsupported activity times and flow-through assumptions which are entirely inconsistent with a forward-looking network, even that of AT&T itself.

The decision is obvious – the Commission must adopt Ameritech Wisconsin's model and its underlying assumptions, rejecting the speculation and inconsistencies endemic to the CLEC NRCM.

These two pivotal issues highlight the vague, yet utopian nature of the NRCM. Much of the CLEC Brief makes claims about the supposed virtues of the NRCM without providing support from the record detailing how any of the model's assumptions are possible for any forward-looking network, much less Ameritech Wisconsin's. Only Ameritech Wisconsin has addressed the concerns of this Commission directly and forthrightly.[103] As Ameritech Wisconsin highlights the flaws within the NRCM (many noted previously in our Opening Brief), the

[103] The CLECs did not conform their Brief to the Commission's Issue List. Further, the CLECs offer little to no citation to the record in their Brief. This leaves Ameritech Wisconsin and the Commission the unenviable task of meticulously reviewing the CLEC Brief and the lengthy record to evaluate the merits of the CLEC Brief, a task which was properly assigned to the CLECs. Ameritech Wisconsin reserves the right to make further arguments should particular sections of the CLEC Brief be found to be on point to specific issues.

Commission must keep in mind these pivotal inconsistencies in assessing the credibility of each side's evidence and arguments.

Activity Times

The CLECs do not address this pivotal issue with specifics of any kind, relying instead on the illusory statements about the NRCM. Only Ameritech Wisconsin utilizes time and motion studies, as well as relies on the experiences of subject matter experts with *actual* experience provisioning UNEs. *See* Tr. Vol. 2 at 722. For its model, Ameritech Wisconsin validated each and every time used. *See* Tr. Vol. 6 at 1592. Through meticulous effort, Ameritech Wisconsin has carefully identified forward-looking activity times. Ex. 129C, Tab A; Ex. 133C, Tab B (extensive documentation detailing the determination of activity times, interview summaries and observation data). Ameritech Wisconsin also performed hundreds of random, direct observations of these activities. Ex. 132, Tabs A & B (Ameritech Wisconsin conducted 225 observations of AIIS Service Center work group and 121 observations of Network Element Control Center work group). Further, Ameritech Wisconsin has made specific adjustments to its probability percentages to reflect forward-looking practices. *See* Tr. Vol. 10 at 3795, 3797; *see also* Ex. 133C, Tab B (identifying numerous forward-looking adjustments to probability percentages).

On the other hand, the CLEC NRCM uses activity times that were arrived at "based on the consensus of the NRCM panel of "experts" through "round table discussions." Tr. Vol. 10 at 3653. *See also* CLEC Br. at I.G.-10. There is nothing in the record to inform the Commission what these "experts" discussed; despite repeatedly being asked what studies, assumptions, instructions and documentation the NRCM modelers considered or relied upon, the CLECs merely recite that activity times, travel times and probability occurrences "were determined in

roundtable discussions." Ex. 130 (Responses to Request Nos. 9, 11, 12, 13, 14, 15, 18, 19, 23, 24, 25 and 67 of the Second Set of Requests.)

All the Commission is left with is what the NRCM "experts" did not do or know:

- did not review actual work performed by Ameritech Wisconsin
- did not watch any ILEC perform activities for the time estimates
- did not watch any technician (even from AT&T) perform some activities for time estimates
- do not know the number of unmanned central offices in Wisconsin
- do not know the percentages of Ameritech Wisconsin's network which are copper and fiber
- did not perform a single time and motion study
- did not even rely upon videotapes which AT&T referred to as the basis for the time estimates
- did not validate activity times

AW Br. at 293.

Armed with this utter lack of knowledge, the NRCM, through its roundtable of experts, arrived at activity times which are grossly understated. The CLECs have not provided any basis in the record for the Commission to find these activity times reasonable; given all that these "experts" did not know and did not consider, the CLEC frankly could not have provided any basis in the record. The Commission must reject these understated, unsupported activity times from the NRCM.

Shockingly, there is further proof from *AT&T itself* that these NRCM activity times are unreasonable. AT&T prepared Task Oriented Cost ("TOC") studies under long-run incremental costs (LRIC) principles (*see* Tr. Vol. 10 at 3896). LRIC is no different than TELRIC pricing principles when determining nonrecurring costs, and thus is highly relevant to the activity time

issue facing this Commission. Tr. Conf. Vol. 6 at 1714-15. Mr. Florence undertook a comprehensive comparison of the TOC study result and the proposed activity times in the CLECs' NRCM for similar activities, and reported his results in Exhibit 43C. That exhibit shows that for comparable activities, the TOC study arrived at dramatically higher activity times for similar UNEs. *Id.* *See also* AW Br. at 294. All this while one of the NRCM's team of "experts" also worked on the TOC studies. *See* Tr. Vol. 6 at 1640.

Despite this overlap in experts, the CLECs offer no explanation in their initial brief as to why the TOC studies result in activity times that are dramatically higher than those the CLECs now propose to use here or why the contemporaneous TOC studies were not relied on (or at least consulted) during the roundtable discussions. This silence comes after AT&T first denied that the TOC studies even existed. (*See* Ex. 130 (CLEC Coalition Response to Request No. 84 of Ameritech Wisconsin's Second Set of Data Requests)(denying that "AT&T develop[ed] Task Oriented Cost (TOC) Studies for its retail or wholesale service").) And then AT&T tried to withhold producing them to Ameritech Wisconsin until the last possible moment. *See* Tr. Vol. 6 at 1621 (Ameritech Wisconsin had access to the TOC data for less than five days before filing *surrebuttal* testimony). Moreover, the CLECs have never responded in detail to Mr. Florence's analysis of the TOC studies and his comparison to the comparable NRCM values. Thus, the unrefuted evidence in this proceeding is that the CLECs arrive at starkly different activity times for comparable activities, depending solely on the purpose to which the study will be used (*i.e.*, whether it will affect their bottom line or Ameritech Wisconsin's).

While we are left with the dramatic inconsistency between the TOC studies and the NRCM, all the CLECs offer this Commission is the speculative discussions of the NRCM's

"experts." Given this fundamental inadequacy, the Commission must reject the activity times proposed by the CLECs in their NRCM.

Flow Through Assumptions

Only Ameritech Wisconsin proposes forward-looking flow-through assumptions that are consistent with the 1996 Act. Ameritech Wisconsin recognizes that there are numerous reasons why some orders will not flow through, even in a forward-looking environment. *See* Tr. Vol. 6 at 1579; AW Br. at 296; CLEC Br. at I.G.-7. Some of these reasons are entirely outside Ameritech Wisconsin's control; the *CLECs* make errors that directly or indirectly lead to fallout. *See id.* at 1579. System errors can occur when the data on the service request does not match the system database, whether it is incorrect information on the CLEC order or in the Ameritech Wisconsin database. *See id.* at 1580. Also, there is designed manual intervention due to complexities of the order or service. *See id.* Further, some processes are designed to be totally manual on a forward-looking basis to provide service in the most economical way possible. *See* Tr. Vol. 4 at 1405; Tr. Vol. 6 at 1582.

Given these complexities that depend on the service provided, Ameritech Wisconsin proposes forward-looking order fallout rates that vary by activity.[104] Ameritech Wisconsin has studied each activity to identify the likelihood that there will need to be a CLEC service order. *See* Ex. 129, Tab A (Ameritech Wisconsin's Confidential Response to CLEC's Third Set of Data Requests, Request No. 39, Attachment 3-39 at 4.) Supported by hundreds of pages of documentation, Ameritech Wisconsin has demonstrated the numerous activities and systems

[104] The CLECs misrepresent the record when they claim "that Ameritech assumes manual activity 100 percent of the time on the ordered unbundled elements." CLEC Br. at I.G.-25. Not surprisingly, the CLECs fail to cite the record in support of this misrepresentation.

necessary to provision each UNE. Ex. 133C, Tab C. The forward-looking rates account for future Ameritech Wisconsin efficiencies.

In stark contrast, the CLEC NRCM applies an unrealistic, across-the-board two percent fallout rate, regardless of the type or number of systems involved. *See* Tr. Vol. 10 at 3655; *see also* CLEC Br. at I.G.-11. This should not be surprising, given how little the NRCM's "experts" know about Ameritech Wisconsin's network. *See supra.*

The NRCM "experts" erroneously rely on a resale service order fallout rate for a single system (the Southwestern Bell Telephone Company's EASE system) as their justification for an across-the-board rate. *See* Tr. Vol. 6 at 1576; *see also* CLEC Br. at I.G.-8-9, 11-12, 24-25. This is wrong for at least three reasons.

First, Ameritech Wisconsin must use many different OSS systems on a forward-looking basis to provide the myriad network elements for CLECs, not a single service. Ex. 133C, Tab C. The CLECs themselves acknowledge that there are multiple systems involved. *See* CLEC Br. at I.G.-6. Even Mr. Turner recognized at the hearing that the more systems that communicate with each other, "the greater the opportunities for errors to occur," even in a forward-looking environment.[105] Tr. Vol. 10 at 3902; *see also* AW Br. at 297.

Second, the EASE system is not used for ordering UNEs:

- It is not now designed nor is planned to be able to process a UNE order (*see* Tr. Vol. 6 at 1576);
- Its flow-through rate does not include provisioning or billing activity (*see id.* at 1665); and
- The system is designed to handle simple migrations between carriers for customers of a limited size and is economically efficient, as is, to serve complex business customers with more than 30 lines. *See id.* at 1577.

[105] Similarly, the Pacific Bell "overall fallout rate for all types of retail service orders" (CLEC Br. at I.G-9) is not comparable.

Third, the CLECs acknowledge themselves that EASE is for resale (*see* CLEC Br. at I.G.-8), yet rely on formally retracted misstatements about EASE as support for this utopian flow through rate. *See* Tr. Vol. 6 at 1663-67.

The CLECs' continued reliance on the EASE system to support the NRCM's flow-through rates is particularly hollow in view of the testimony of Ameritech Wisconsin witness Rich Florence at the hearing. Specifically, the CLECs repeat their allegation that SWBT has indicated that it expects to achieve 99% flow-through for UNEs through a gateway system similar to EASE. CLEC Br. at I.G.-8-9. Yet, Mr. Florence directly and unequivocally rebutted this allegation. True to form, however, the CLECs again ignore the record evidence and simply repeat their unsupportable positions with nary a whisper about Mr. Florence's testimony.

Were the CLECs to talk about the record, they would tell this Commission that Mr. Florence testified that, in a joint declaration filed with the California commission, Pacific Bell, a sister ILEC of Ameritech Wisconsin, put to rest the misstatements and mischaracterizations by AT&T about SWBT's ability to achieve the extraordinarily high flow-through rates that the CLECs advocate here. Tr. Vol. 6 at 1664-65. The declaration explained, in no uncertain terms, that SWBT has no expectation of achieving the flow-through rates for UNEs that AT&T claims. *Id.* at 1665.

Perhaps not so shockingly at this point, *AT&T itself*, as developed in its internal TOC studies, has a significantly lower flow-through rate than that it proposes for the NRCM. These studies show fallout rates that ranged from **[Begin Conf**********End Conf]**, depending on the work group involved. *See* Tr. Conf. Vol. 7 at 1849. These rates highlight the importance of the number of activities involved has in flow-through rate variance (more activities → less flow-through). Since the provisioning of certain UNEs involves more activities

than others, flow-through rates should logically vary (as they do in Ameritech Wisconsin's model), rather than stay constant (as they do in the CLEC NRCM). This is why the EASE system is not a legitimate point of comparison – it is a single system that involves only one service.

Most importantly, the TOC studies confirm the reasonableness of Ameritech Wisconsin's estimates for flow-through. This is entirely consistent with the results from an independent third party OSS testing process from New York State, which found that only 60.4% of all UNE orders flowed through the system without manual intervention. *See* Tr. Vol. 6 at 1585-86.

Again, the Commission is left with a choice: the well-reasoned flow-through rates of Ameritech Wisconsin, which are consistent with independent third party tests as well as those of AT&T, or the inconsistencies of the CLEC NRCM *vis a vis* the AT&T TOC studies, which contain no logical support, only the inappropriate EASE comparison. The choice is clear. The Commission should recognize the fundamental differences between a resale service order system for simple migrations and the many different OSS systems that must exist on a forward-looking basis to provide CLECs with numerous unbundled network elements, and reject the CLEC's proposed flow-through rate in favor of those proposed by Ameritech Wisconsin.

Travel Times

Only Ameritech Wisconsin's model takes into account any Wisconsin-specific information. Ameritech Wisconsin utilizes travel time assumptions based on input from subject matter experts. *See* AW Br. at 306. On the other hand, the NRCM relies on national defaults for travel times and the percentage of unmanned central offices. As noted earlier, the NRCM chief "expert," Mr. Turner, does not have any idea of the percentage of unmanned central offices in Wisconsin. *See* Tr. Vol. 10 at 3891. In fact, the CLECs provide no factual support for the

national default percentages that are used in the NRCM. Again, Ameritech Wisconsin and the Commission are left with the speculative estimates of the NRCM and its team of "experts." It is obviously inappropriate to use the identical travel time assumption for all states, no matter their population density. Given the well-considered travel time assumptions for Ameritech Wisconsin, the Commission must again reject the CLEC NRCM.

Number of Jobs Per Visit

Relative to the vastly more important issues of activity times and flow-through assumptions, the CLECs devote significant time to the argument that Ameritech Wisconsin technicians should "perform four separate tasks while [at a non-staffed central office]." CLEC Br. at I.G.-16. For support, the CLECs only cite a single example, which by their own admission takes place only 9% of the time. *See* CLEC Br. at I.G.-25-26.

Similar to the earlier issues, the NRCM never considered any Wisconsin-specific information to determine whether this would be an appropriate assumption. The CLECs erroneously assume (CLEC Br. at I.G.-5) that Ameritech Wisconsin's technicians have "mechanized field access systems," although they point to nothing in the record to substantiate this. Moreover, by assuming four separate tasks, in effect, the CLECs assume that there will be three other job orders submitted simultaneously for that unmanned central office that the same technician is competent to complete. Instead of considering evidence from Ameritech Wisconsin's network, the CLECs would have this Commission rely on the uninformed opinion of the NRCM "experts."

Given the inconsistencies between the results arrived at by the NRCM compared to the realities of AT&T's network, the CLECs need to offer some sort of proof before this Commission can rationally reject the evidence offered by Ameritech Wisconsin. The

Commission should dismiss the speculative, unrealistic assumption of multiple jobs per visit to unmanned central offices.

Forward-Looking OSS

The CLECs have not considered the full import of the Eighth Circuit's decision in *IUB III*. The proponent of the NRCM, Mr. Turner, has not analyzed the model to see if there should be any changes based on this decision. *See* Tr. Vol. 10 at 3878. Further, the CLECs erroneously minimize the precedent established by the Eighth Circuit acting in its Hobbs Act role. *See* CLEC Br. at I.A.-7-10. Without rearguing the legal arguments made *supra*, Ameritech Wisconsin contends that this Commission must utilize "a forward-looking cost calculation methodology that is based on the incremental costs that an ILEC actually incurs [to] produce rates that comply with the statutory requirement of section 252(d)(1) that an ILEC recover its 'costs' of providing the shared items." *IUB III*, 219 F.3d at 752-53. The NRCM, with its unsupported and often contradicted assumptions, fails to meet this requirement of the Act.

OSS Computer Expenses

The CLECs have not made specific arguments on this issue. Accordingly, Ameritech Wisconsin rests on the arguments that it made in its Initial Brief (at 301-02), reserving the right to respond to any new arguments raised by the CLEC Coalition in their Reply Brief.

Loop Technologies

Again, the CLEC NRCM makes a number of unsubstantiated, unsupported statements on the availability of digital loop technologies. *See* CLEC Br. at I.G.-23-24. As discussed *supra* in section I.C(6), Ameritech Wisconsin cannot unbundle loops terminated on any type of IDLC system. To comply with FCC rules, the least cost, most efficient way to unbundle such loops is to convert the integrated loops to universal DLC ("UDLC") or copper feeder loops providing a

MDF appearance. *See* Tr. Vol. 6 at 1597. When this happens, there is a 100% probability that there will be manual intervention. *See id.*

On the other hand, without considering the actual future makeup of Ameritech Wisconsin's network, the CLEC NRCM sets the copper loop percentage at 40% and the IDLC percentage at 60%. *See* Tr. Vol. 10 at 3659. Even this unrealistic assumption may not be the actual fantasy figure at the core of the NRCM. In a deposition, Mr. Segura, a witness for AT&T in a similar proceeding to this one, asserted on numerous occasions that IDLC was used *100% of the time* in the NRCM. *See* Tr. Vol. 6 at 1599. Even the NRCM's experts should realize that not all of Ameritech Wisconsin's loops are fiber. *Compare with id.* at 1600 (similar conclusion from Mr. Segura in proceeding with SWBT). The Commission must again reject the idle and inconsistent speculation in the CLEC NRCM.

Service Center-Related Costs

No matter how forward-looking an environment the CLECs wish to assume, service representatives will still be necessary. Again, the NRCM, without any knowledge of this specific network, dismisses the need for any Ameritech Wisconsin service representatives in the UNE process. The Commission must reject the NRCM's failure to include these representatives.

Computer Service Order Processing Costs

But for the nonrecurring request for a service or UNE, Ameritech Wisconsin would not incur computer service order processing costs. While the CLECs conclude that Ameritech Wisconsin should have OSS with almost perfect flow-through, they would deny Ameritech Wisconsin recovery on computer expenses incurred in the very provisioning of that perfect flow-through. The effort is baldly inconsistent and must be rejected by the Commission.

(a) If the Ameritech model is selected:

1. What inputs should be adjusted and why?

None. The Ameritech Wisconsin model accurately describes nonrecurring costs as mandated by the 1996 Act for the reasons stated above. Having taken into account all necessary inputs in the appropriate manner, the Commission does not need to make any adjustments to this model.

The CLECs cut and paste four objections to the Ameritech Wisconsin model from Mr. Turner's direct testimony (*compare* CLEC Br. at I.G.-19-26 with Tr. Vol. 10 at 3689-96) against the Ameritech Wisconsin model. These nearly verbatim objections ignore the substantial record that has been developed through later discovery (the TOC studies) as well as subsequent pre-filed and live testimony. Ameritech Wisconsin has addressed the following objections head-on in its briefs.

Evaluate Nonrecurring Cost From A Process Perspective (CLEC Br. at I.G.-20)

The Ameritech Wisconsin model addressed the "distinction between a new unbundled loop and a migration." CLEC Br. at I.G.-20. Different activities are modeled for migrations versus new unbundled loops, resulting in vastly different costs to the CLEC. Only Ameritech Wisconsin's model accounts for forward-looking, yet still theoretically feasible, dedicated inside plant (DIP) and dedicated outside plant (DOP) that will reduce CLEC costs. For example, the CLECs recognize that there are pre-ordering, ordering and provisioning processes (*see* CLEC Br. at I.G.-2-3), yet advocate flow through rates based on the EASE system, which is not comparable from a process perspective.

Utilize a Forward-Looking Network Architecture in Developing Nonrecurring Cost (CLEC BR. at I.G.-23)

Again, the CLEC NRCM makes a number of unsubstantiated, unsupported statements on the availability of digital loop technologies. *See* CLEC Br. at I.G.-23-24. As discussed *supra* in section I.C(6), Ameritech Wisconsin cannot unbundle loops terminated on any type of IDLC

system. To comply with FCC rules, the least-cost, most efficient way to unbundle such loops is to convert the integrated loops to UDLC or copper feeder loops providing a MDF appearance. *See* Tr. Vol. 6 at 1597. When this happens, there is a 100% probability that there will be manual intervention. *See id.*

On the other hand, without considering the actual future makeup of Ameritech Wisconsin's network, the CLEC NRCM sets the copper loop percentage at 40% and the IDLC percentage at 60%. *See* Tr. Vol. 10 at 3659. Even this unrealistic assumption may not be the actual fantasy figure at the core of the NRCM. In a deposition, Mr. Segura, a witness for AT&T in a similar proceeding to this one, asserted on numerous occasions that IDLC was used *100% of the time* in the NRCM. *See* Tr. Vol. 6 at 1599. Even the NRCM's experts should realize that not all of Ameritech Wisconsin's loops are fiber. *Compare with id.* at 1600 (similar conclusion from Mr. Segura in proceeding with SWBT). The Commission must reject the idle and inconsistent speculation in the CLEC NRCM.

Incorporate the Concept of Flow-Through via Efficient OSS into its Development of Nonrecurring Cost (CLEC Br. at I.G.-24)

Ameritech Wisconsin has already highlighted the errors and inconsistencies of the NRCM flow through inputs. *See supra.*

Incorporate Efficient Processes into the Development of its Nonrecurring Cost (CLEC Br. at I.G.-25)

Here, the CLECs focus, almost exclusively, on the number of activities a technician should perform while at an unmanned central office. Ameritech Wisconsin has addressed this argument in its Initial Brief (AW Br. at 306-07) as well as *supra.* The CLECs offer no other specific criticisms.

2. Are there any other adjustments that should be made to nonrecurring costs?

No.

(b) If the CLEC model is selected:

1. What inputs should be adjusted and why?

Consistent with the above discussion, Ameritech Wisconsin rests on its arguments from its Initial Brief.

2. Are there any other adjustments that should be made to nonrecurring costs?

Consistent with the above discussion, Ameritech Wisconsin rests on its arguments from its Initial Brief.

(2) Should disconnection costs be included in up-front installation costs?

Yes. Disconnection costs should continue to be included in up-front installation costs. Ameritech Wisconsin only seeks to recover disconnection costs in the identical manner that it has from its retail customers, consistent with established telephone industry practice.

Further, the benefits the CLECs propose to gain from Dedicated Inside Plant ("DIP") and Dedicated Outside Plant ("DOP") in the NRCM are not possible, not even in a forward-looking environment. The NRCM, by assuming 100% DIP and DOP, in effect, concludes that no physical assistance is *ever* needed by a field or central office technician. Tr. Vol. 2 at 292. Achieving 100% DIP and DOP requires much more than maintaining dedicated facilities in place at the end user's premises assumed by the CLECs (at CLEC Br. I.G.-19). *See* AW Br. at 304-05 (detailing the underlying assumptions to achieve 100% DIP and DOP).

Also, Mr. Turner himself agreed that "an assumption of 100 percent DIP and 100 percent DOP require[s] an accurate forecast of future demands." Tr. Vol. 10 at 3906. This is impossible to meet, even in the CLECs' utopian futureworld. The CLECs have not provided any forecast about their future demand for UNEs. They have not made any commitment regarding demand

expectations that might impact Ameritech Wisconsin's network. In short, to meet this assumption, Ameritech Wisconsin would have to greatly overbuild its network at considerable cost. Tr. Vol. 1 at 294.

Again, the NRCM ignores the forward-looking realities of Ameritech Wisconsin, choosing utopian assumptions instead. The Commission should continue the recovery of disconnection costs with up-front installation costs.

(a) If so, what expected life should be used in determining the frequency of disconnection costs?

The CLECs have not addressed this question in their Initial Brief. Accordingly, Ameritech Wisconsin rests on its Initial Brief, and advocates using **[Begin Conf******** ********End Conf]** as an average location life. This calculation is reasonable and should be adopted by the Commission.

(3) What overhead loading rate should be used in determining nonrecurring costs?

Ameritech Wisconsin's overhead loading rate, for the reasons discussed *supra* at section I.B.(2), is the most accurate overhead loading rate and should be adopted by the Commission. What the CLECs propose only highlights the failings of the NRCM. In passing, the CLECs mention that the NRCM utilizes an input of 10.4% as its variable overhead factor. *See* CLEC Brief at I.G.-10. On the other hand, the CLECs argue for a series of adjustments to Ameritech Wisconsin's joint and common cost model, each of which Ameritech Wisconsin believes to be arbitrary and erroneous. Even after these adjustments, *the CLECs themselves* propose a joint and common cost loading rate of **[Begin Conf**********End Conf]** for Ameritech Wisconsin's network, a rate significantly higher than that advocated for the NRCM. *Id.* at I.B.-31. This again demonstrates how irrelevant the NRCM is for determining the rates for unbundled network elements from Ameritech Wisconsin's network. *Compare with* AW Br. at 293 (discussing the

NRCM "experts" utter lack of knowledge regarding Ameritech Wisconsin's activity times and central offices).

Only Ameritech Wisconsin has proposed a reasonable and accurate model to develop an overhead loading factor. The Commission should adopt the factor proposed *supra* at section I.B.(2).

(4) Are there costs associated with combining network elements?

Ameritech Wisconsin and the CLECs are in apparent agreement on this question. The CLECs do not argue this issue in their initial brief.[106] While disagreeing vigorously (and we contend, erroneously) with the import of the Eighth Circuit's opinion in *IUB III* (*see* CLEC Br. at I.A-7-10), the CLECs do not advance any arguments on the question of costs. This is consistent with the complete lack of record discussion on the costs for combining network elements. The Commission should resolve the multiple issues which have developed records and allow the Supreme Court to conclusively resolve the legal questions on which there is great (and continued) disagreement between the parties. Should the Court overturn the Eighth Circuit's decision in *IUB III*, the Commission could commence a new docket to determine the costs for combining network elements.

(a) If so, how should those costs be determined?

Ameritech Wisconsin rests on its Initial Brief. AW Br. at 320.

(b) If so, how should those costs be recovered by Ameritech?

Ameritech Wisconsin rests on its Initial Brief. *Id.*

(5) What are the costs associated with providing an "existing combination"?

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[106] Ameritech Wisconsin assumes the CLEC discussion of UNE combinations (CLEC Br. at I.G.-15) addresses "existing combinations," which shall be addressed *infra* at section I.G.(5).

Only Ameritech Wisconsin calculates a reasonable, forward-looking estimate of the costs associated with providing an "existing combination." Ameritech Wisconsin's model accounts for the differences between a simple *migration* (where dial tone currently exists) and the UNE-P where there is no dial tone currently.[107] *See* Ex. 41. Clearly there is a much higher probability that other work groups will have to perform specific activities where there is no dial tone. *See* Tr. Vol. 6 at 1614, 1703, 1713. Also, to provide CLECs with the service level they demand, separate service orders for the ULS port and the unbundled loop will be necessary. *See* Tr. Vol. 6 at 1613.

On the other hand, the CLECs rely on the implausible assumptions of the NRCM. *First*, the NRCM assumes 100% DIP and DOP (*see* CLEC Br. at I.G.-13), which is not plausible, even in a forward-looking environment. *See supra* at § I.G.(2). *Second*, the NRCM uses an entirely unrealistic activity time of 17.5 minutes for analysis and resolution of fallout problems (*see* CLEC Br. at I.G.-15), ignoring the myriad activities required for manual service orders: manually logging in and assigning the service request a log number, manually reviewing fields according to the local service ordering requirements, validating data as applicable for the required fields, imputing data for the applicable orders, and manually sending confirmation back to the requesting CLEC. Tr. Vol. 6 at 1617-18. The NRCM's activity times are inconsistent with those from AT&T's own TOC study. *See supra* at § I.G.(1). *Third*, the NRCM assumes the use of copper and loop technologies with no consideration of their actual or future existence in Ameritech Wisconsin's network. *See* CLEC Br. at I.G.-13-14; *see also supra* at Loop Technologies discussion.

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[107] By accounting for these differences, Ameritech Wisconsin's model evaluates nonrecurring costs from a process perspective. Ameritech Wisconsin anticipates the specific and real differences in needed activities based on the existence of dial tone that will continue to exist on a forward-looking basis.

In short, in many instances there are activities (and corresponding costs) that go beyond making "a records change." CLEC Br. at I.G.-20. Ameritech Wisconsin's proposed prices should be accepted by the Commission.

(6) What are the costs associated with providing an "ordinarily combined" collection of UNEs?

Ameritech Wisconsin and the CLECs are in apparent agreement on this question. While disagreeing vigorously (and we contend, erroneously) with the import of the Eighth Circuit's opinion in *IUB III* (*see* CLEC Brief at I.A-7-10), the CLECs do not advance any arguments on the question of costs. There is no record in this proceeding from which the Commission can affirmatively answer that question. The Commission should resolve the multiple issues which have developed records and allow the Supreme Court to conclusively resolve the legal questions on which there is great (and continued) disagreement between the parties. Should the Court overturn the Eighth Circuit's decision in *IUB III*, the Commission could commence a new docket to determine the costs for combining network elements, whether "ordinarily combined" or not.

H. Collocation Related Issues

(1) What types of collocation arrangements should be required?

The CLECs essentially ignore this issue. While the CLECs propose rates for a number of different types of collocation arrangements, they do not provide any support for several of them. Each of these is described at length in Ameritech Wisconsin's Initial Brief and that detailed analysis will not be repeated here. Rather, Ameritech Wisconsin will summarize it position.

Adjacent Off-Site Collocation and Common Collocation. As a general matter, this docket was not instituted to adopt new forms of collocation, and the CLECs have not proposed terms and conditions for any form of collocation not presently offered by Ameritech Wisconsin. Thus, despite the fact that the CLECs have proposed *rates* for two form of collocation – Adjacent Off-Site Collocation and Common Collocation – there is absolutely no evidence in the record to

provide legal or factual support for *terms and conditions* for these forms.[108] Apparently recognizing the lack of an evidentiary record which would permit this Commission to adopt terms and conditions, the CLECs completely ignore this aspect of the Issues List.

Putting aside the lack of a factual record to support any new forms of collocation, as explained in Ameritech Wisconsin's Initial Brief, Adjacent Off-Site Collocation is not a legally permissible form of collocation. The CLECs do not seriously suggest otherwise.[109] Collocation, by definition, must occur on an ILEC's premise, as the Act, the FCC, and several federal courts and State commissions all recognize. Clearly, Adjacent Off-site Collocation does not fit the bill. *See, generally,* AW Br. at 324-27.[110]

With respect to the CLECs' Common Collocation, this is not a form of collocation that has been requested by a CLEC, offered by Ameritech Wisconsin or approved by this Commission. Moreover, the CLECs have not presented terms and conditions for Common Collocation, let alone provided evidence to support the reasonableness of such terms and

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[108] Ironically, although the CLECs do not propose any terms and conditions for Adjacent Off-site Collocation, they do see fit to unilaterally modify at least one of the nonexistent terms and conditions. (See CLEC Br. at I.H.-23 (decreeing that DS3 connectivity would not be an option)). Moreover, although there are no set terms and conditions, the CCM assumes that the CLEC will have access to the ILEC Main Distribution Frame ("MDF"). *Id.* This is an improper assumption, as Ameritech Wisconsin witness Debetaz explained. Tr. Vol. 4 at 1248-49.

[109] The CLECs make the assertion that the FCC's *Advanced Service Order* supports the forms of collocation represented in the Collocation Cost Model. CLEC Br. at I.H.-4. Of course, the CLECs do not point to any particular paragraph to support their claim, which is not all that surprising, since the claim is utterly without foundation. There is nothing in the FCC's *Advanced Services Order,* or any other FCC order to date, which supports anything like adjacent off-site collocation.

[110] Although they do not reference it in testimony, the CLECs may point to the arbitration award in the arbitration between AT&T and Ameritech Wisconsin. That proceeding is ongoing and there is no interconnection agreement with any CLEC that provides for adjacent off-site collocation. Ameritech Wisconsin has filed objections to the proposed interconnection agreement setting forth why any provision requiring off-site collocation is unlawful.

conditions. The shared caged collocation offering for which Ameritech Wisconsin has proposed rates, on the other hand, is presently available to CLECs through binding agreements and has been approved by this Commission. Moreover, it is entirely consistent with the Act and the FCC's collocation-related regulations and orders. *See, generally,* AW Br. at 327.

Adjacent On-site Collocation. As discussed more fully below (see *infra* section I.H (4)), in view of the case-specific nature of adjacent on-site collocation, it is not feasible nor desirable to develop one-size-fits-all rates. Rather, those rates should be determined on an individual case basis, consistent with the rates approved for other forms of physical collocation.

* * *

In conclusion, as set forth in Ameritech Wisconsin's Initial Brief, the Commission should set forth rates for caged, cageless and shared caged physical collocation, as well as virtual collocation. It should not require, nor set rates for, Adjacent Off-site Collocation or Common Collocation. Finally, it should adopt Ameritech Wisconsin's proposal that rates for Adjacent On-site Collocation be set on an individual case basis.

(2) Whose collocation model should be used as a basis of determining collocation costs, Ameritech's model or the CLECs' model (CCM)? Include supporting reasons based on identified strengths and weaknesses of the two models.

After reading the CLEC Coalition's brief on the collocation issues in this proceeding, one has to wonder if the CLECs read any of the pre-filed testimony by Ameritech Wisconsin or attended any of the hearings. For its "brief," the CLEC Coalition does little more than cut and paste from the direct testimony of Mr. Turner, the principle advocate of the CLECs' Collocation Cost Model ("CCM").[111] Utterly lacking from the CLECs' filing is any response to the many

[111] The CLECs are so sloppy in their advocacy that, even where Ameritech Wisconsin agreed with one of Mr. Turner's criticisms, the CLECs simply rehashed Turner's initial testimony, failing to acknowledge that, at least with respect to this one criticism, Ameritech Wisconsin

criticisms of the CCM raised by Ameritech Wisconsin witnesses Conwell, Debetaz and Florence in their own pre-filed testimony. Instead, the CLECs resort to rehashing Mr. Turner's testimony, and all but ignore the live testimony conducted over several days about collocation-related issues.

The conclusion is clear. Mr. Turner, who professes to know much about how collocation is provisioned, proposes to calculate collocation costs using a model that bears no resemblance to any central office presently in use by an incumbent LEC. Moreover, as discussed above in section I.H.(1) he does not even cost out the proper forms of collocation. Instead, as has been their ploy from the beginning, the CLECs hope to gloss over the many infirmities of the CCM by simply repeating over and over what the CCM allegedly accomplishes. The CLECs ignore the fact that the model is not based on Wisconsin specific factors, does not reflect the collocation offerings available from Ameritech Wisconsin, and rests on a hypothetical central office even though federal courts have struck down such cost methodologies as unlawful.

The CLECs also employ another interesting tactic. Despite clear direction from the Commission to identify specific inputs that they would propose that the Commission change, if it adopts the Ameritech Wisconsin proposal, the CLECs largely fail to do this. For the most part, the CLECs simply ignore this directive. Where they do not, the CLECs often claim that Ameritech Wisconsin's collocation model cannot be adjusted to reflect the criticisms raised by the CLECs. This is absurd, and nothing more than attempt to falsely elevate the CCM to some

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agreed to modify its cost model consistent with Turner's initial testimony. See discussion of floor space charge for cageless collocation *infra.*

preferential status. Just like the CCM, the Ameritech Wisconsin model can be rerun with different assumptions. For the CLECs to suggest otherwise is disingenuous.[112]

The CLECs also are unclear about what proposed changes they do ultimately propose to make to Ameritech Wisconsin's model. In limited instances, the CLECs provide specific adjustments that they propose. However, at page I.H.-5 of their brief, the CLECs note that, in his prefiled testimony, Mr. Turner made proposed corrections to Ameritech Wisconsin's collocation elements. However, the CLECs makes no effort whatsoever to identify what these proposals are, and whether the CLECs are still advocating them. This places Ameritech Wisconsin in the unfair position of having to scour the record for such alleged proposed adjustments, guess which ones the CLECs still advocate and respond accordingly. That, however, was what the CLECs were supposed to do (but did not) in their initial brief. To the extent that the record contains a proposed adjustment that the CLECs did not brief, they have waived any arguments.

Finally, Ameritech Wisconsin maintains that no changes are needed to the inputs used in the Ameritech Wisconsin collocation costs studies. However, to the extent that the CLECs have proposed specific adjustments in their brief, Ameritech Wisconsin will respond in section I.H (2)(b) below.

The CLEC Collocation Cost Model

As they themselves concede, the CLECs only provide a summary defense of their CCM. CLEC Br. at I.H.-6. Instead of providing this Commission with a detailed explanation of their

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[112] To the extent that the CLECs have, in fact, ignored the issues list in this case and did not specifically identify specific inputs that they believe the Commission should change in the Ameritech Wisconsin cost model, they have waived their right to do so. Obviously, if the CLECs raise such proposals for the first time in their reply brief, the Commission should ignore them. It would be manifestly unfair to allow the CLECs to answer the questions posed on the issues list for the first time in their reply brief, when Ameritech Wisconsin has no opportunity to respond.

model, the CLECs simply cite generally to the record, leaving the Commission and Ameritech Wisconsin to guess what the CLECs are relying on and what they are not.

To the extent that the CLECs attempt to defend the CCM, they do nothing more than rehash Mr. Turner's direct testimony, including the many misstatements that Mr. Turner made. The CLECs do not respond to any of the general or specific criticisms set forth by Ameritech Wisconsin. Thus, much of what Ameritech Wisconsin can say about the CLECs' initial brief, it has already said in its own Initial Brief.

Indeed, the whole underlying premise of the CCM – the hypothetical central office – is unsupportable. And the CLECs do little to demonstrate to the contrary. Other than repeat, nearly verbatim, Mr. Turner's description of the features of this mythical central office, the CLECs do nothing to demonstrate that it is appropriate to base an entire collocation model on a central office that admittedly exists nowhere. The CLECs do not defend the model central office except in the most cursory way, and certainly do not justify any of the arbitrary assumptions underlying the central office (*e.g.* size, number of lines, configuration, allocation of space, lack of state-specific factors.) Ameritech Wisconsin's Initial Brief provides an exhaustive factual and legal explanation as to why the CCM's hypothetical central office is wholly inappropriate, and we will not repeat that discussion here. *See, generally,* AW Br. at 336-39.

Similarly, although the CLECs throw around the phrase "best practices," and claim that their model, but not Ameritech Wisconsin's, employs best practices, the CLECs fail to provide any substantiation. In fact, there is no record evidence to support the CLECs' claims that the CCM employs best practices. As explained in Ameritech Wisconsin's Initial Brief, best practices is more than just a matter of the CCM modelers asserting that they are following best practices. *See, generally,* AW Br. at 339-40.

There are numerous other defects with the CCM, and the CLECs have not acknowledged, let alone addressed, any of them. First, there are a host of assumptions underlying the model (wholly apart from the "model" central office) that are not consistent with how Ameritech Wisconsin actually provisions collocation. By way of summary:

- Mr. Turner errs when he asserts that there are six forms of collocation. Adjacent Off-site Collocation is a misnomer, and this Commission has not issued any final order requiring Ameritech Wisconsin to provide it. *See, generally,* AW Br. at 324-27.

- The assumptions underlying the CCM's version of physical collocation are unsupportable. The CCM assumes an overly aggressive occupancy factor, fails to account for cages smaller than 100 square feet, and erroneously assumes that the BDFB will be located next to the collocation space, even though it is shared with the ILEC. *See, generally,* AW Br. at 342-43.

- The CLECs continue to understate the requirements of physical collocation. Despite the fact that Mr. Turner admitted during cross-examination that his initial pre-filed testimony had not identified all of the requirements of physical collocation (Tr. Vol. 10 at 3819), the CLECs blindly recite Turner's error (CLEC Br. at I.H.-6). As Ameritech Wisconsin witness Mr. Debetaz explained, Mr. Turner's pre-filed testimony ignores several important requirements necessary to establish physical collocation in an ILEC's central office, including provisioning power and security, engineering cabling routes, verifying adequacy of HVAC, and performing floor load calculations. Tr. Vol. 4 at 1236, 1238-40. Turner's testimony is even more deficient in the case of non-conditioned space, where he omits any discussion of ironwork and BDFB installation, and configuration of HVAC, power and lighting. *Id.*

- The CLECs' claims notwithstanding (CLEC Br. at I.H.-11), the security measures provided for in the CCM are grossly inadequate. All the CCM includes is the cost of a security access card (*id.*), and even that cost is grossly understated. AW Br. at 359. The CCM does not account for any of the other legitimate security measures that Ameritech Wisconsin properly employs. *See* AW Br. at 359-60.

- The CLECs continue to mistakenly assume that the physical demarcation point in a physical collocation arrangement is at the POT bay. CLEC Br. at I.H.-7. Yet the CLECs' own witness, Mr. Turner, conceded on cross that it is not always at a POT bay and that there are several other options possible. Tr. Vol. 10 at 87-88; *see also* Tr. Vol. 4 at 1237-38. Once again, the CLECs totally ignore the record.

- The CCM erroneously proposes rates for Common Collocation, which is not offered in Wisconsin, instead of Shared Caged Collocation, which is. The resulting faulty assumptions made by the CLECs will lead to underrecovery of

Ameritech Wisconsin's costs. *See, generally,* AW Br. at 344. Most notably, the CCM requires Ameritech Wisconsin to set aside a full 550 square feet of common space, even if only two CLECs want one cabinetized relay rack each.[113] In such a situation, only 5% (4.4/86.25) of the available space would be used, leaving Ameritech Wisconsin holding the bag on the vast majority of the space. *Id.*

- Cageless physical collocation is not identical to virtual. And it is patently not true that "the only difference between Cageless Collocation and Virtual Collocation is that a cageless collocator retains ownership and control of the collocated equipment." CLEC Br. at I.H.-19. Likewise, it is not true that "[f]rom a cost perspective, there is no difference between Cageless Collocation and Virtual Collocation." *Id.* at I.H.-20. Equipment in a cageless physical collocation arrangement is not placed within Ameritech Wisconsin's equipment lineup, as is virtually collocated equipment. Moreover, since the CLECs' access rights to virtual and cageless physical arrangements are completely different, there are different security issues to consider. *See, generally,* AW Br. at 345-47.

- For both cageless physical and virtual collocation, the CLECs assume an unreasonably small equipment footprint. *See* AW Br. at 348.

- The assumptions regarding adjacent structure (on-site) collocation are also wrong. The CCM unreasonably assumes that all adjacent structures will be placed four feet from the outer wall of the central office. In so doing, the CLECs ignore the fact that the ILEC has the right to determine where adjacent structures will be located on its property. *GTE Services Corp. v. FCC*, 205 F.3d 416, 426 (D.C. Cir. 2000); *see also* AW Br. at 347-48. The CLECs also refer to using trailers as adjacent structures. CLEC Br. at I.H.-21. As Ameritech Wisconsin witness Mr. Debetaz explained, trailers are wholly inappropriate for use as adjacent structures, as they would pose a safety threat to ILEC and CLEC personnel using Ameritech Wisconsin property and could damage carriers' networks and equipment. Tr. Vol. 4 at 1242-43.

- To the extent the CCM estimates virtual collocation costs based on assumptions made about central office layouts and the CCM's versions of cageless collocation (*see* CLEC Br. at I.H.-14-17), these costs are understated for the reasons discussed herein.

Second, the CCM systematically underestimates collocation costs by omitting whole categories of costs and using inappropriate resource quantities and costs where the CCM does include them. Moreover, key cost data, such as planning activity times and material and

[113] In fact, the CLECs allude to just such a scenario, referencing DSL technology that uses only two racks but which "can serve a substantial number of customers." CLEC Br. at I.H.-20.

installation costs for HVAC, physical cable racking, power delivery and power consumption, are inadequately documented in the CCM, making it difficult to verify the accuracy of CCM costs. Additionally, the CLECs misuse R.S. Means building construction cost data, and rely on stale vendor quotes primarily from a vendor who does no business with ILECs.[114] Ameritech Wisconsin's Initial Brief identifies all of these deficiencies, and more, at length. *See, generally,* AW Br. at 349-362.

Third, where the CLECs do identify costs, they often propose to recover them on a recurring basis even though the Act's cost-recovery principles clearly indicate that recovery on a nonrecurring basis is appropriate. This issue is discussed in detail *infra. See also* AW Br. at 340-42.

Finally, once again, the CLECs make no mention of the AT&T TOC studies. These TOC studies, which AT&T first denied the existence of (Ex. 130, Response to Request No. 84), and then vigorously resisted the production of (Tr. Vol. 6 at 1621), demonstrate a significant disparity between what AT&T and the other CLECs are advocating here as far as time estimates and flow-through percentages, and what AT&T actually claims that it experiences when it is creating a study to justify *its* costs. *See* AW Br. at 293-95, 299-300, 351; Ex. 43C (comparing time estimates between AT&T's TOC studies and CLECs' NRCM). This continues the CLECs' pattern, from the moment that the CLECs received the data request, of ignoring these very damaging studies, hoping that they will just go away. To the extent that the CLECs attempt to respond to the TOC studies, finally, in their Reply Brief, they will likely have to rely

[114] Again, Ameritech Wisconsin will not repeat the lengthy discussion found in its Initial Brief. However, it bears noting that, once again, the CLECs did not respond to any of the criticisms set forth in Ameritech Wisconsin's prefiled testimony or at the hearing.

(improperly) on extra-record evidence, since they presented little by way of rebuttal during the hearing.

In sum, the CLEC CCM is grossly deficient. So too is the CLECs' "defense" of it. They repeatedly misrepresent or ignore the record, which clearly and fully sets forth the numerous shortcomings with the CCM. This Commission should reject it in full.

The Ameritech Wisconsin Model

The Ameritech Wisconsin collocation template was explained at length in Ameritech Wisconsin's Initial Brief. *See* AW Brief at 328-36. In their brief, the CLECs levy a number of general and specific criticisms of the Ameritech Wisconsin model. Each of the objections is meritless, and nearly all of them have already been addressed in Ameritech Wisconsin's Initial Brief. In this section, we will address the general objections. In the next section, regarding proposed adjustments to the Ameritech Wisconsin model, we will address the specific objections.

First, the CLECs claim that Ameritech Wisconsin has failed to provide costs for all of the methods of collocation. CLEC Br. at I.H.-25. This is not true. Ameritech Wisconsin has proposed rates for all forms of collocation that are available to CLECs in Wisconsin, or, in the case of adjacent on-site collocation, proposed that rates be determined on a case-by-case basis, owing to the fact-specific nature of each arrangement. In fact, the CLECs have proposed rates for forms of collocation that do not even exist (*i.e.* adjacent off-site and common physical collocation), and have failed to provide rates for shared caged collocation.

Second, on several occasions, the CLECs claim that Ameritech Wisconsin's costs are higher than those reported in the CLECs' CCM. CLEC Br. at I.H.-5, 25. That, of course, is no objection at all; indeed it shows how unreasonably low the CCM costs are.

Similarly, the CLECs claim that Ameritech Wisconsin's costs are higher than "other external costing guidelines." CLEC Br. at I.H.-5-6. The CLECs repeat this objection later in their brief. *Id.* at I.H.-24. Yet at no point do the CLECs identify any of these supposed external guidelines – not a *single* one – perhaps because there are no such "external costing guidelines." Instead, the CLECs merely cite to Mr. Turner's testimony, which, like the CLECs' brief, claims that Ameritech Wisconsin's costs are higher than external costing guidelines, but does not identify a single such guideline. Tr. Vol. 10 at 3665.

Third, the CLECs object that Ameritech Wisconsin utilizes a per-foot basis to calculate certain costs. CLEC Br. at I.H.-26-27. This issue is discussed at length in section I.H.(3) *infra.*

Fourth, the CLECs claim that Ameritech Wisconsin does not utilize a systematic method for determining whether costs should be recovered on a recurring or nonrecurring basis. CLEC Br. at I.H.-28-29. This claim is baseless.[115] Ameritech Wisconsin seeks to recover costs in the same manner in which they are incurred. Thus, one-time startup expenses are recovered through nonrecurring charges. Likewise, expenses that are incurred on a periodic or continuing basis are recovered through monthly recurring charges. This approach is fully consistent with the cost-recovery principles set forth by the Act and the FCC's implementing regulations. As Mr. Florence explained, "[t]he proper costing approach ensures that the party that causes the cost pays for the actual cost. . . . This concept is reflected in Ameritech Wisconsin's collocation cost study." Tr. Vol. 6 at 1552-53.

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[115] This issue is another good example of how the CLECs' suggestion that adjustments cannot be made to the Ameritech Wisconsin collocation model are without foundation. To the extent that the Commission determines that any nonrecurring costs proposed by Ameritech Wisconsin ought to be recovered on a nonrecurring basis, it is a simple mathematical calculation to implement such a determination. The CLECs admit this (CLEC Br. at I.H.-28), despite their dire tone elsewhere that adjusting the Ameritech Wisconsin model is not possible.

The CLEC approach, on the other hand, while "systematic," is contrary to these established cost recovery mechanisms. The CLEC position attempts to categorize costs based on whether or not they are reusable and sharable, and treats all reusable and sharable costs as recurring. CLEC Br. at I.H.-28. Not surprisingly, the CLECs do not point to any legal support for their position, since only Ameritech Wisconsin's approach to determining its non-recurring and recurring costs for collocation is consistent with the FCC's position. *Second Report and Order*, ¶ 32; AW Br. at 341-42.

The CLEC proposal seeks a free ride. Under their proposal, Ameritech Wisconsin incurs all the upfront costs to provision one or more 550 square foot collocation areas, then has to wait to recover its money.[116] And, in fact, Ameritech Wisconsin may never recover its money, if there are only one or two collocators in a particular central office (or zero if they all leave). *See* AW Br. at 342-43. The CLECs recognize this, and admit that they are essentially seeking a subsidy from Ameritech Wisconsin. CLEC Br. at I.H.-11 (noting that CCM takes into account the effect of "sizeable, one-time, up-front expenditures" on CLECs who are "vulnerable competitively.")

Moreover, the distinction that the CLECs attempt to draw – between assets that are reusable and sharable and those that are not – is a false one. What the CLECs claim is reusable or sharable (*e.g.* racking, power or space) may not be. In each instance, Ameritech Wisconsin will need to fashion the collocation arrangement to meet the CLECs' wishes. The CLECs ignore the fact that each collocation arrangement is a customized installation for the requesting CLEC, and that the alterations to space, provisioning of power, cages (where requested), and cross-

[116] The CLEC proposal is particularly onerous in that under their model, Ameritech Wisconsin would have to incur the cost of preparing separate 550 square foot collocation areas for each of the physical collocation arrangements available (*i.e.* caged, cageless and shared caged.)

connect panels are based on the specifications of the requesting carrier for that particular installation at a particular point in time. Furthermore, demand from multiple carriers for collocation in a given central office tends to occur more or less concurrently, not on a successive basis. This means that such items would be rarely required or reusable by Ameritech Wisconsin on a timely or efficient basis. *See* Tr. Vol. 6 at 1553; AW Br. at 341.

Nor are the CLECs correct in their assumption that Ameritech Wisconsin will recover its costs from future collocators or by its own reuse of assets used by the original CLEC. Such an assumption is unfounded, given the customized nature of each collocation arrangement. That assumption is especially unreliable given the wide variety of arrangements that can be requested and the wide variety of equipment configurations that may be placed in collocation space. It is entirely appropriate that the collocating carrier, rather than Ameritech Wisconsin, bear the costs and the business risks of paying for the costs of building its network, including collocation installations. *See* Tr. Vol. 6 at 1553-54; AW Br. at 341.

Fifth, the CLECs allege that Ameritech Wisconsin is somehow "goldplating" its collocation arrangements. CLEC Br. at I.H.-8. Again, the CLECs are guilty of throwing around words that sound ominous, but for which they offer no factual support. The CLEC Coalition offers no evidence at all to show how Ameritech Wisconsin is supposedly "goldplating" its network, nor have the CLECs claimed that any of the rate elements proposed by AW evidence "goldplating." In fact, there is simply no evidence in the record to support that claim.

Finally, the CLEC Coalition claims that incumbent LEC collocation models "sometimes" are based on the first collocation area being situated so that all future collocators can be accommodated in the same area. CLEC Br. at I.H.-8. This assertion really shows the depths to which the CLECs will sink to try to impugn the Ameritech Wisconsin model. Significantly, the

CLECs do not even claim that Ameritech Wisconsin makes this assumption (it does not), only that "sometimes" some ILECs do. The CLECs further contort their argument to state that "sometimes" this assumption results in placement of the collocation area away from the cross-connects. *Id.* Again, they offer no evidence that this objection applies to the Ameritech Wisconsin model at all.

In fact, it is the CLEC model that arbitrarily assumes that each collocation area will accommodate four collocators, even if there is no demand. *See* AW Br. at 342-43. Despite this, the CLECs claim (erroneously) that their proposal "avoid[s] the economic disadvantages of exceptionally large collocation areas." CLEC Br. at I.H.-8-9. What their proposal really does is foist the burden of their model on the ILEC, thus permitting the CLECs, but not the ILEC, to avoid their model's "economic disadvantages."

The criticisms that the CLECs lodge against Ameritech Wisconsin's collocation cost model are little more than smoke and mirrors. Mostly, the CLECs criticize with absolutely no support – either factually in the record, or legally in the law. Where they do cite to the record, they merely rehash baseless objections first presented by their hired witness. These objections are equally meritless. Each was addressed in Ameritech Wisconsin's pre-filed and live testimony, a fact the CLECs conveniently and steadfastly ignore.

(a) If Ameritech's model is selected;

1. What inputs should be adjusted and why?

2. Are there any other adjustments that should be made collocation costs?

In their brief, the CLECs identify objections that they have with certain cost elements in the Ameritech Wisconsin collocation model. In a few instances, the CLECs also propose a

specific adjustment to the Ameritech Wisconsin model. In every instance, the objection is without foundation.

Central Office Floor Space Charge

The CLECs first object to the gross-up calculation that Ameritech Wisconsin performs to take into account that space outside a physical collocation cage is needed to provide access and to account for building obstructions. Ameritech uses **[Begin Conf********End Conf]** square feet for each 100 square feet of collocation equipment space; the CLECs propose 37.5 per 100 square feet. CLEC Br. at I.H.-29-30. The CLECs do not identify anything specifically wrong with Ameritech Wisconsin's calculation; they merely assert that their number is better. *Id.* It is not.

Ameritech Wisconsin's figure is based on its experience provisioning collocation space. As Mr. Florence testified, "[f]or Shared Cage or Physical collocation, the central office floor space is based on a nominal 50 square feet plus the additional space required for obstructions such as columns, pipes and cable racks, access to the collocation area and support space. . . . It has been our experience that in order to provision 50 square feet of net usable space in a central office equipment room, **[Begin Conf********End Conf]** additional square feet of space is necessary to accommodate access around obstructions such as columns, pipes, and cable racks." Tr. Vol. 6 at 1555-56.

The CLECs' figure, on the other hand, is based on nothing more than a drawing attached to Mr. Turner's testimony. CLEC Br. at I.H.-30, citing Ex. 86. Clearly, the Ameritech Wisconsin figure is more appropriate. For instance, the CLEC diagram does not take into account building obstructions (pipes, columns, etc.), access ways used to get to the collocation space, or other support space within the equipment room.

The CLECs also object that the first gross-up performed by Ameritech Wisconsin should not properly be applied to cageless physical and virtual collocation and should be zero. CLEC Br. at I.H.-30. The CLECs are completely wrong, and apparently do not understand how the floor space charge for cageless collocation was determined. Rather than use a 100 square foot cage for cageless and virtual collocation, Ameritech Wisconsin determined the footprint of a single equipment bay. All that Ameritech Wisconsin has taken into account in determining the footprint used by an equipment bay in a cageless or virtual environment is the space directly under and in front and behind the equipment bay, as well as on either side of the row of bays. This is directly analogous to the space within the 100 square-foot cage, which obviously already includes space in front of and behind equipment bays, as well as space on the end of the rows necessary to access each row. The gross-up performed by Ameritech Wisconsin does *not* address that type of space, in either the caged or cageless/virtual setting. What the gross-up does address is space taken up by building obstructions (such as pipes, cable racks and support columns) and the space needed to reach the equipment area.[117] The CLECs apparently operate under the assumption that there are no such obstructions in a cageless or virtual environment, even though they concede that it is proper to take this into account in the *caged* environment. Likewise, although the CLECs recognize that there is access space outside a cage that must be accounted for, they somehow believe that comparable access space will not be needed in a cageless or virtual setting. Needless to say, the CLECs' approach defies common sense.

[117] As Mr. Florence explained, in order to derive the footprint for racks of equipment in physical cageless and virtual arrangements, "there still needs to be some amount of additional space around the bay for access and some amount of support space allocation." Tr. Vol. 6 at 1558.

In addition to the gross-up to account for access to space and building obstruction, Ameritech Wisconsin performs a second gross-up calculation to account for the collocator's proportionate share of common building elements.

As Mr. Florence explained, in addition to the central office equipment area, a central office building must have associated floor space that services the central office equipment area. The support space includes, but is not limited to, stairs and stairwells, elevator shafts, mechanical equipment rooms, common hallways, electrical service entry, generator and fuel tank room, and building delivery areas. All of these items provide essential functions for the building and benefit both the collocators and Ameritech Wisconsin. Tr. Vol. 6 at 1556.

With respect to physical caged collocation, the CLECs have no problem with Ameritech Wisconsin's approach. Tr. Vol. 10 at 3745. However, as it pertains to cageless physical and virtual collocation, the CLECs oppose any amount of gross-up. CLEC Br. at I.H.-30. As perhaps the most telling evidence that the CLECs have all but ignored the record in this case, the CLECs do not disclose that Ameritech Wisconsin *agrees* with this aspect of the CLECs' objections. In fact, in response to Mr. Turner's rebuttal testimony (Tr. Vol. 10 at 3673-74), Ameritech Wisconsin witness Mr. Florence indicated that Ameritech Wisconsin would correct an error in the compliance phase of this docket that would alleviate the only legitimate problem with Ameritech Wisconsin's cageless gross-up.[118]

Riser Space

In their initial brief, the CLECs make references to their witness's testimony in *Michigan* about supposed errors in Ameritech *Michigan's* cost development for riser space. The CLECs

[118] "Mr. Turner is correct. The space requirement factor should not have been applied to the Net Usable Equipment Space amount shown on Tab 8.3, line 10 of the cost support. Ameritech Wisconsin agrees to correct this computation in the compliance phase of this proceeding." Tr. Vol. 6 at 1559.

then refer to the *Michigan* commission's decision on riser space. It is entirely unclear what objections the CLECs are attempting to raise here, if any,[119] and vague references to proceedings in another state are not sufficient to raise them here. Without any specifics about what the CLECs are talking about, no further response is possible.

The only other objection that the CLECs have to Ameritech Wisconsin's cost development for riser space relates to the appropriate fill factor. As discussed in our Initial Brief and earlier in this brief, consistent with the Act and the FCC's regulations, Ameritech Wisconsin has used fill factors that represent "a reasonable projection of the actual total usage of the element." AW Br. at 43, *citing First Report and Order*, ¶ 682. This is true for the fill factors here as well.

In support of their proposed fill factor, the CLECs complain that this is a different fill factor from what was used in Michigan. Yet the CLECs provide no support for the implicit proposition that the figure used in Michigan is based on actual usage. In fact, it is not.

The only other objection by the CLECs – that the fill factor proposed is unsupported by the record – is patently false. Again, the CLECs have ignored the record. As Mr. Florence explained in his rebuttal testimony, the fill factor for the cable racking used to transport the entrance fiber cables from the vault to the collocation space is based upon the usage of the rack, the number of total cables the rack can hold and the estimated number of cables that will occupy the rack. Tr. Vol. 6 at 1559-60. The fiber racking from the vault to the collocation area is essentially dedicated to collocation, since the route to the collocation area does not normally coincide with Ameritech Wisconsin's routing from the cable vault to a distributing frame. Therefore, only CLEC cabling will normally occupy the collocation fiber cable rack. *Id.* at

[119] Based on Mr. Turner's pre-filed testimony, it appears that any objections that the CLECs had based on the Ameritech Michigan filing do not apply here. Tr. Vol. 10 at 3674.

1559.[120] In his testimony, Mr. Florence explained, step-by-step, how Ameritech Wisconsin arrived at the **[Begin Conf*********End Conf]** fill factor. *See* Tr. Vol. 6 at 1500. The CLECs have never challenged any of those assumptions, and do not do so in their brief.[121]

Power Consumption

The CLECs first set up a straw man argument, stating that it is "unusual," at least in the mind of one of the CLECs' witnesses, that Ameritech Wisconsin calculated its power consumption charge on a fuse amp, rather than a load amp, basis. CLEC Br. I.G.-31. The CLECs do not suggest that there is anything wrong with Ameritech Wisconsin's approach, and even concede that Ameritech Wisconsin accounted for this approach by applying a 66% load factor to the AC usage cost element. *Id.* at 32. This objection is much about nothing.

The CLECs then suggest that a similar load factor should have been applied to the DC Power Investment cost element. *Id.* The CLECs do not offer a shred of explanation why; they just assert it. In fact, the CLECs are incorrect. If one is using only 66% of the capacity of the equipment, generally one will only draw 66% of the total AC power load. This does not mean that a similar calculation is appropriate for an *investment* element. In fact, in no circumstances should a load factor be multiplied by power plant (consumption) investment as it would be inconsistent with TELRIC principles. If anything, the load factor should be divided into the

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[120] Mr. Turner disagrees with Mr. Florence here. Tr. Vol. 10 at 3746-47. However, Mr. Turner offers no support for his statements. He claims that "these cable racks can and are used by the incumbents," but offers no proof. As Mr. Florence explained, Ameritech Wisconsin generally does not use these racks because typically the path used for its cables is not the same as the path used for CLEC cables. Tr. Vol. 6 at 1559. The CLECs cannot and do not rebut this. Moreover, even if Ameritech Wisconsin could sometimes use the same racks, that certainly would not justify using a fill factor as high as 80%, as Mr. Turner proposes.

[121] The CLECS also suggest that Ameritech's riser space cost is an ICB because it is based on per foot charges. CLEC Br. at I.H.-31. For the reasons discussed *infra* at section I.H.(3), this objection is meritless.

"investment element. In this sense, Ameritech Wisconsin's investment figure is conservatively low.[122]

200 Conductor Electrical Cross-Connect Block

The CLEC Coalition's beef here is that Ameritech Wisconsin allegedly does not have any supporting documentation for its unit investment cost for 200 Conductor Electrical Cross-Connect Blocks. CLEC Br. at I.H.-33. Once again, the record unequivocally demonstrates otherwise. In his rebuttal testimony, Ameritech Wisconsin witness Mr. Florence testified that the source of the investment used to calculate the 200 connector block cost was the ARPSM cost model described by Mr. Palmer in his testimony, and that the calculation is based on the investment required per DS0 channel (2 conductors or 1 pair), which is then multiplied by 100 to obtain the investment for 100 pairs (200 conductors)." Tr. Vol. 6 at 1561. The CLECs do not take issue with any specific aspect of this calculation; rather they falsely claim that Ameritech Wisconsin did not explain its calculation.

The CLECs also claim that Ameritech Wisconsin incorrectly applied the 377C investment category instead of 357C. The CLECs are incorrect. Since the source of this investment is from Ameritech Wisconsin's switching cost model, ARPSM, which identifies various 377C switching investments, that is the correct account. The CLECs' suggestion that the proper account is 357C is incorrect since this is the account for circuit equipment. *Id.*

DSX-1 Panel

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[122] As Ameritech Wisconsin explained in response to one of the CLECs' data requests, the investment per amp used to calculate the DC Power Consumption charge is understated by nearly a factor of two. *See* Ex. 133C, Tab D (study uses **[Begin Conf**********End Conf]**, when a recent quote suggests that **[Begin Conf**********End Conf]** per amp is more appropriate).

As with the 200 Conductor Electrical Cross-Connect Block, the CLECs claim that Ameritech Wisconsin has provided no supporting documentation for its proposed DSX-1 Panel cost. CLEC Br. at I.H.-34. Here too, the CLECs have ignored, or perhaps not even read, the record in this case. Once again, one need only look to Mr. Florence's testimony. As he explained, the material cost for the DSX-1 panel was provided by the Digital Transport Engineer subject matter expert ("SME") and the investment will accommodate 56 DS1s. Tr. Vol. 6 at 1562. Moreover, not only did Ameritech Wisconsin's investment figure come from a knowledgeable SME, it was compared with a known material investment for the comparable equipment used in the Southwestern Bell ("SWBT") states and the two amounts were almost the same value. *Id.* While the CLECs claim that Ameritech Wisconsin's figure is not consistent with the "direct vendor quote" that Mr. Turner obtained, the CLECs do not identify what quote they are talking about. CLEC Br. at I.H.-34. In any event, as discussed fully in Ameritech Wisconsin's Initial Brief, the vendor quotes used by the CCM are unreliable and outdated. *See, generally*, AW Br. at 352-53.

DS1/DS3 Repeaters

The CLECs' criticism of DS1/DS3 repeaters misses the mark. They object on the ground that "repeaters only become necessary when the cable lengths for DS3 and DS1 circuits become too long," and quote to an unidentified FCC order. CLEC Br. at I.H.-35. Ameritech Wisconsin does not quarrel with the notion that repeaters are typically not necessary. However, where they are, Ameritech Wisconsin ought to be compensated if it bears the cost of installing them. As Mr. Florence testified:

> it seems that Mr. Turner believes that the repeater costs are an integral part of the collocation costs incurred by the CLEC. This is not the case. Ameritech Wisconsin recognizes that, at times, there may be a need for repeaters, depending on the cabling length of the facilities connecting the

> CLEC's collocation space and Ameritech Wisconsin's equipment. When required, this equipment is used to maintain proper signal levels.

Tr. Vol. 6 at 1563. Thus, the only dispute seems to be whether Ameritech Wisconsin will bear the costs of repeaters, or whether the CLEC will compensate Ameritech Wisconsin for costs Ameritech Wisconsin incurs.

Moreover, in situations where repeaters are necessary, Ameritech Wisconsin gives the CLECs the *option* to provide their own repeater or use this *optional*, rather than required, feature provided by Ameritech Wisconsin. *Id.* Thus, the CLEC can avoid compensating Ameritech Wisconsin by providing its own repeaters.

Central Office Build Out (Nonrecurring)

True to form, the CLECs falsely claim that Ameritech Wisconsin has not provided adequate supporting documentation for its central office build-out ("COBO") charge. CLEC Br. at I.H.-35. Ameritech Wisconsin explained at length the nature of its COBO charges in the pre-filed direct and rebuttal testimony of Mr. Florence (*see* Tr. Vol. 6 at 1567-69; 1653-56), and provided further support through its collocation costs studies,[123] the Collocation Cost Template and the CCT support documentation (*see, e.g.*, CCT Support, Tabs 8.4, 8.5). In addition, the CLECs claim that the supporting documentation that Ameritech Wisconsin did provide does not link up to its proposed rates. CLEC Br. at I.H.-35. However, the CLECs do not provide a single example of what they are talking about; therefore, Ameritech Wisconsin is unable to respond, except to state that it is not aware of any such linkage problems.

The CLECs also make four specific objections to the Ameritech Wisconsin COBO charge. Each will be addressed in turn:

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[123] *See* Ex. 116C (Ameritech Cross-Connect Service for Interconnection (ACCSI); Collocator-to-Collocator Cross-Connect Service for Interconnection (CCCSI), Physical Collocation Service, Cageless Physical Collocation and Virtual Collocation Service cost studies).

(1) The CLECs claim that the COBO charges represents improper "retrofitting" costs. CLEC Br. at I.H.-36-37. Ameritech Wisconsin has already addressed this issue in its Initial Brief. *See* AW Br. at 335-36. The CLECs offer no legal support whatsoever for their position. This is not surprising, however; as explained in Ameritech Wisconsin's Initial Brief, both the FCC's *Advanced Services Order* (at ¶ 41) and *Second Report and Order* (at ¶ 30) support Ameritech Wisconsin's right to recover these types of collocation costs. AW Br. at 335-36. Instead, the best the CLECs can muster is a quote from an Ameritech FCC Tariff that simply describes how the COBO charge was developed. CLEC Br. at I.H.-36-37. It certainly does not support the CLECs' position.

As Ameritech Wisconsin witness Dr. Aron explained, COBO charges are not "embedded costs." Rather, the are properly thought of as "vintage integration costs" that a forward-looking, efficient firm will incur to ensure that different vintages of equipment are able to work with one another. Tr. Vol. 6 at 1890. The flaw underlying the CLECs' analysis is that no network can be built in a single day. As Dr. Aron explained, "[p]roductive capacity in any market is built over time, both to economize on resources, and because uncertainties are resolved over time. Thus, a firm building a reasonably efficient, forward-looking network will incur the costs of integrating different vintages of capital equipment." Tr. Vol. 6 at 1887. Consistent with the teachings of noted economists (*id.* at 1891-92), Ameritech Wisconsin is entitled to recover such vintage integration costs, including costs associated with central office build out.

In sum, Ameritech Wisconsin's costing approach is consistent with the TELRIC methodology and provides a reasonable approximation of the forward-looking, long run costs it incurs in accommodating co-located CLECs. The Commission should therefore approve the COBO charges as proposed by Ameritech Wisconsin.

(2) The CLECs next assert that Ameritech Wisconsin's COBO charges includes significant levels of administrative and travel costs. CLEC Br. at I.H.-37-38.

The CLECs concede that travel time will be incurred and do not challenge the notion that Ameritech Wisconsin is entitled to recover the costs associated with such travel. *Id.* In fact, the only objection that the CLECs have is to claim that the travel time incurred by the Collocation Coordinator should be the same as that incurred by the CSPEC (Central Office Engineer). The CLECs are incorrect in the assumption that the travel done by the Collocation Coordinator and the travel done by the CSPEC are, for some reason, automatically the same. The simple fact is that the role of the Collocation Coordinator involves more trips to central offices than the CSPEC, based on Ameritech Wisconsin's actual experience in provisioning collocation. The CLECs do not explain why it is that they presuppose that those travel times should be the same, and there is no logical reason to assume they are. *Id.*

The CLECs also object to administrative time for engineers. Once again, ignoring (or distorting) the record, the CLECs assert that Ameritech Wisconsin has not justified this administrative time. CLEC Br. at I.H.-38. Not surprisingly, Ameritech Wisconsin witness Mr. Florence address this in his pre-filed testimony. In fact, Mr. Florence identified each of the personnel associated with building out collocation space: "The design and management function [accounted for in the COBO cost development] represents the administrative, engineering or travel times spent by the Collocation Coordinator (now referred to as the Collocation Project Manager), Outside Plant (OSP) Engineer, Power Engineer, Central Office Engineer (now referred to as the Common Systems Space Planner (CSSP)) Digital Transport Engineer (DTE) and the Quality Auditor for implementing the physical collocation service. Additionally, we now also have a Collocation Coordinator Center Manager who also provides for certain design

and management functions, as well." Tr. Vol. 6 at 1565. Mr. Florence then identified the specific tasks associated with each:

- The Collocation Project Manager manages the overall collocation provisioning process. The basic activities include the receipt and review of the collocation order, developing the internal timeline, notifying internal and external parties of the initial walk-through, and establishing, monitoring and tracking on the critical provisioning milestone dates to ensure on time and accurate delivery of the service arrangement and necessary handoffs. Tr. Vol. 6 at 1565.

- The CSSP manages the assignment of central office space requirements and maintains the detailed floor plans for each central office. The CSSP determines whether and where collocation space may be available. More specifically, the CSSP attends the initial meeting set up by the Collocation Project Manager and the initial walk-through, creates floor space drawings along with any associated notes and documentation and updates the floor space drawings after the build-out has been completed. *Id.*

- The DTE is responsible for contracting for completion of the central office work required to provide facilities to the CLEC and project managing the work to completion. The DTE also creates the Telephone Equipment Order and identifies the telecommunications equipment such as bays, racking and panels needed to satisfy the collocation request. Finally, the DTE attends all scheduled conference calls or status meetings established by the CC. *Id.* at 1566.

- The power engineer determines whether the power needs for a collocation request can be met by an existing Battery Distribution Fuse Bay (BDFB). If not, the power engineer will recommend the location for the new BDFB and evaluate whether other work needs to be done prior to starting the required power work. *Id.* at 1566.

- The OSP engineer assigns the appropriate meet point manhole and provides a sketch of the manhole to the CC. The outside plant engineer also determines the length of cable required to extend from the manhole to the cable vault and also checks the availability and length of riser cable that is needed to extend from the cable vault to the main distribution frame. Also, the OSP engineer creates the appropriate engineering drawings for any OSP construction work that may be needed. *Id.* at 1567.

- The Quality Engineer performs a final inspection of the collocation installation to ensure that the equipment is safely installed in conformance with our practices and policies. *Id.*

- The Collocation Coordinator Manager lends support to the Collocation Project Manager and is responsible for monitoring and tracking the CSSP space verification response and informing the service center as to space availability

> within the established FCC and state Commission intervals. The Collocation Coordination Manager also is the centralized point where extraordinary costs are calculated and pro-rated to the individual collocator, as well as tracking and monitoring data base activity to ensure complete and accurate data input. This function is also responsible for validating Switch and TIRKS inventories. *Id.* at 1568.

As has now become an all-too-familiar tactic, the CLECs simply ignore this testimony. Moreover, the remedy that they suggest – elimination of *all* administrative costs – is manifestly draconian, and would not be justified even if the CLECs' position had merit. Mr. Turner's suggestion that somehow all the administrative and travel time associated with the work performed by these critical workgroups will somehow disappear under his proposal is ludicrous.

(3) The CLECs object to the charge for asbestos abatement evaluation. Their objection is misguided. First, they refer to the FCC's *Second Report and Order* – but provide no paragraph citation. Nevertheless, it appears that the CLECs remain confused about the nature of this charge. This charge is not for the removal of asbestos, as the CLECs' seem to think. *See* CLEC Br. at I.H.-38 (referring to removal of asbestos). Rather, "it is for the work effort to check if [asbestos] is present. Ameritech Wisconsin incurs this cost because of the CLECs' request for collocation space, not because Ameritech wants to use the space. As a result, Ameritech Wisconsin is entitled to recover such a cost from the CLEC cost causer." Tr. Vol. 6 at 1568-69. This was pointed out to the CLECs when it first became clear that the CLECs misunderstood the charges, *id.*, but the CLECs ignore the record nonetheless and lodge their unmeritorious objection again.

(4) Finally, the CLECs object that the COBO charge should be recovered on a recurring basis. As discussed in detail *infra,* (AW Br. at 340-42) the CLEC position is wrong. First, Ameritech Wisconsin should recover costs in the manner in which it incurs them. There is no suggestion here that Ameritech Wisconsin does not incur all of these costs upfront. Second, it

is inaccurate to say that all of the collocation preparation work is usable by future collocators. Many of these costs, as described previously, are CLEC-specific and may not be suitable for a future CLEC. Moreover, there is no guarantee that future demand for caged physical collocation will be sufficient to ensure that even reusable COBO work is recovered. CLECs have a variety of options available to them, including virtual, shared caged and cageless collocation, as well as other non-collocation means of obtaining access to UNEs and interconnection to Ameritech Wisconsin's network.

In short, none of the CLECs' objections to Ameritech Wisconsin's nonrecurring COBO charge have merit. This Commission should approve this element of Ameritech Wisconsin's collocation cost proposal.

Power Delivery

The CLECs' potshots at Ameritech Wisconsin's power delivery charge fall well short of their mark. First, the CLECs claim that Ameritech Wisconsin's cost study "represents an extremely poor design . . . when compared to other incumbent local exchange companies' cost studies." CLEC Br. at I.H.-39. Yet the CLECs do not cite to any other ILEC's studies, or explain at all what they mean. Next, the CLECs claim that we inappropriately include the BDFB in the nonrecurring power delivery charge instead of the power consumption recurring rate. *Id.* Yet, they do not explain why that is inappropriate. Then they accuse Ameritech Wisconsin of "math and logic errors" but, as per usual, do not identify a single such error.[124] *Id.* There is simply no way to respond meaningfully to these cryptic and unsubstantiated objections.

The rest of the CLECs' objections are equally illusory. They obliquely state that our study's BDFB fusing "suggests an 800 amp," then assert, without a supporting citation, that

[124] Mr. Turner made this same reckless accusation at page 123 of his pre-filed rebuttal testimony, but there too provides no elaboration. Tr. Vol. 10 at 3687.

Ameritech Wisconsin has improperly assumed a 400 amp BDFB. CLEC Br. at I.H.-39. This objection is as nonsensical today as it was when it appeared, nearly verbatim, in Mr. Turner's pre-filed testimony. Tr. Vol. 10 at 3687. Similarly, the CLECs assert that Ameritech Wisconsin assumes no sharing of power cable racking (CLEC Br. at I.H.-39), but they fail to identify the basis for the contention that Ameritech Wisconsin assumes no sharing, nor do they even make clear with whom Ameritech Wisconsin purportedly assumes no sharing. Finally, the objection about grounding is misplaced. *Id.* The grounding recovered in the COBO charge is for the equipment in the collocation cage; the grounding recovered through the power delivery rate element is for grounding of power equipment. The CLECs are talking apples and oranges here.

(b) If the CLEC CCM model is selected:

1. What inputs should be adjusted and why?

2. Are there any other adjustments that should be made to collocation costs?

Ameritech Wisconsin discussed its proposed adjustments to the CCM in its initial brief. Despite the fact that these adjustments and the criticisms underlying them were all suggested in the prefiled testimony filed by Ameritech Wisconsin witnesses Conwell, Debetaz and Florence, the CLECs did not address any of these objections in their opening brief. Therefore, Ameritech Wisconsin rests on its Initial Brief. *See* AW Br. at 336-64 and Confidential Attachment 1.

(3) Should collocation rates be set in terms of per-foot costs or should averaged distances be used to represent any collocation arrangement?

(a) If average distances are selected what average distances should be used?

As explained in its Initial Brief, Ameritech Wisconsin utilizes a per-foot basis for certain costs. *See* AW Br. at 364-66. Although the CLECs do not directly respond to Staff's specific question, the CLECs' initial brief contains some reference to their position on this issue. Thus,

Ameritech Wisconsin will respond, as best it can given the format of the CLECs' initial brief, to what the CLECs say.

First, the CLECs continue to erroneously call Ameritech Wisconsin's approach an individual case basis ("ICB") approach, as if affixing a certain label (albeit an inappropriate one) will lend an air of credibility to their otherwise meritless argument. CLEC Br. at I.H.-26.[125]

Second, labels aside, pricing certain components of collocation on a per-foot basis is fair and reasonable. The approach taken by Ameritech Wisconsin is consistent with paragraph 691 of the FCC's *First Report and Order*, which holds that costs "must be attributed on a cost causative basis" and that costs are "causally related to the network element being provided if the costs are incurred as a direct result of providing the network elements, or can be avoided, in the long run, when the company ceases to provide them." The Ameritech Wisconsin approach, by definition, is "cost based." The CLECs claim otherwise (CLEC Br. at I.H.-26), but they are just throwing around terms again. By design, the Ameritech Wisconsin approach ensures that a CLEC pays for the number of feet of cable, etc. that it uses. That is the textbook definition of "cost-based." The CLEC approach, on the other hand, ensures a deviation from being cost-based by charging each CLEC based on the average number of feet of cable used, regardless of whether the CLEC uses more, or less.

The CLECs' cries about cost uncertainty are wholly illusory, and highlight the fact that per-foot pricing is not the same as ICB pricing. As Mr. Florence explained, "[u]nder an ICB

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[125] CLECs try to use this false label to attack the per-foot rates. The CLECs note that Ameritech Wisconsin may charge for exceptional or extraordinary collocation costs on an ICB basis. CLEC Br. at I.H.-26. This has nothing to do at all with the question posed by Staff regarding cabling costs, notwithstanding the CLECs' efforts to suggest otherwise. Moreover, it would be unreasonable to believe that the parties can produce a "definitive set of prices" (CLEC Br. at I.H.-27) for collocation. It is simply implausible to think that the parties will be able to anticipate every single situation.

approach, all costs are unknown at the outset. In other words, the end user of the service or element being costed is not provided information such as a per foot or per splice cost. All aspects of the cost are unknown until the ICB costs are determined. However, with collocation, the CLEC knows in advance the per foot or per splice costs/prices that will be charged." Tr. Vol. 6 at 1550.[126]

Nor are the CLECs' cries about delays plausible. In fact, the requesting carrier itself or its vendor is responsible for measuring the cable distances relative to its equipment locations at the walk through meeting that is scheduled as part of the provisioning process for every collocation request. The only cause of delay is if the carrier or its vendor elects not to attend the walk through in person. Tr. Vol. 6 at 1550-51.

Third, there is no merit to the accusation by the CLECs that the Ameritech Wisconsin approach takes the ability to determine if costs are cost-based or nondiscriminatory away from the Commission. The Commission has every opportunity in this docket to determine if the per-foot rates proposed by Ameritech Wisconsin are cost-based. Moreover, since the rates will apply to all CLECs, there is no threat that one CLEC will be favored over another. Furthermore, to the extent that the CLECs are suggesting that there will be later disputes about the amount of feet of cable, etc., that a particular collocation arrangement will use, the CLECs ignore the fact that the interconnection agreements between the CLECs and Ameritech Wisconsin have dispute resolution provisions which enable CLECs to challenge any such determinations with which they

[126] The CLECs' comments ignore the fact that the majority of the costs of placing and pulling these cables can be estimated by the CLECs, in advance, with a high degree of accuracy. Moreover, these cable pulling costs are a relatively minor portion of the CLEC's total collocation costs and are even a smaller portion of the CLEC's total cost equation when deciding to enter a given central office or market. These issues are simply not significant factors in the CLEC's overall cost picture. Tr. Vol. 6 at 1552; AW Br. at 365-66.

do not agree. Moreover, the Commission itself has a mechanism by which a CLEC may file a complaint if it believes that it is being subjected to discriminatory treatment.

Finally, the CLECs suggest that Ameritech Wisconsin will place its equipment in preferred places. CLEC Br. at I.H.-26. Of course, there is no evidence that Ameritech Wisconsin has done this in the past; moreover, if Ameritech Wisconsin were to do so, there are remedies available to the CLECs that we are confident they would avail themselves of. Again. the CLECs resort to unsubstantiated hyperbole.

(4) Should collocation rates be standardized rates, or should any collocation rates be determined on an individual basis?

As discussed above and in its Initial Brief (at pages 366-67), Ameritech Wisconsin has proposed standardized rates for physical collocation within a central office (caged, cageless and shared caged), as well as virtual collocation. Standardized rates for adjacent on-site collocation, as a result of the unique circumstances of each arrangement, are not appropriate. This is particularly true in light of the fact that no CLEC has yet availed itself of adjacent on-site collocation. The CLECs do not address this issue, except as discussed elsewhere in this section. Ameritech Wisconsin therefore stands on its Initial and Reply Brief on this question.

I. Other Issues

(1) If docket 6720-TI-160 (Ameritech OSS) requires cost-based pricing, what method of determining cost for directory assistance, listing database, and operator services should be used?

Ameritech Wisconsin stands on its Initial Brief. *See* AW Br. 367-69. The CLECs did not address this issue and thus they have waived any objections to Ameritech Wisconsin's cost studies.

(2) Method of determining costs of 911 call related databases.

Ameritech Wisconsin stands on its Initial Brief. *See* AW Br. 369-71. The CLECs did not address this issue and thus they have waived any objections to Ameritech Wisconsin's cost studies.

(3) Method of determining the cost of signaling.

Ameritech Wisconsin stands on its Initial Brief. *See* AW Br. 371-72. The CLECs did not address this issue and thus they have waived any objections to Ameritech Wisconsin's cost studies.

(4) How should the cost of printed directories be recovered?

Ameritech Wisconsin stands on its Initial Brief. *See* AW Br. 372-73. The CLECs did not address this issue and thus they have waived any objections to Ameritech Wisconsin's cost studies.

II. IMPLEMENTATION ISSUES:

A. What Is The List Of Elements That Are To Be Priced In This Proceeding?

The CLECs answer this question by stating that the Commission should set prices for those network elements that the FCC identified in its "national list," as well as certain network elements that the CLECs say are related to Ameritech Wisconsin's Project Pronto. CLEC Br. at II.A.-1.

With respect to Project Pronto and the network elements that the CLECs assert are related to it, there are several fundamental problems. First, there is simply no evidence in the record upon which this Commission could base rates for those network elements (assuming, *arguendo*, that they are bona fide network elements.) The CLECs have certainly not presented any evidence regarding what those rates would be, or how they would be determined. The CLECs, of course, gloss over this point – as they have throughout this proceeding.

Second, and more fundamentally, unbundling of Project Pronto is not proper for a multitude of reasons. Those reasons have been discussed at length in Ameritech Wisconsin's Initial Brief, and herein, at section I.C.(6), and will not be repeated here.

A complete list of the network elements that should be priced in this docket is found at Exhibit 23C. The CLECs have not identified any specific network elements (except as discussed above with respect to Project Pronto) that are missing from that list.

The CLECs devote most of their discussion of this question to what they admit seems like an "abstract hypothetical argument." CLEC Br. at II.A.-2. On this score, they are right. The CLECs first spend several pages discussing the fact that the FCC's list is a "minimum" list, a point with which Ameritech Wisconsin generally agrees. The CLECs then discuss the possibility that in the future Ameritech Wisconsin and the CLECs might disagree about whether an ILEC is required to unbundle a new network element. It is altogether unclear what point the CLECs are trying to make, or what that point (whatever it might be) has to do with this docket. The CLECs do not cite any examples of what they are talking about, or seek any relief that deals with the "abstract hypothetical argument" they set forth. This Commission should not issue advisory orders based on vague notions that a future series of events might (or might not) occur.

B. What Should Be The Procedure For Incorporation Of Actual Costs Into Tariff Prices If Tariffs Are Required From The OSS Proceeding (6720-TI-160), Or In What Manner Are The Results Of The Proceeding Made Available To Arbitration Proceedings?

Ameritech Wisconsin set forth its position on the propriety of the Commission requiring Ameritech Wisconsin to incorporate the results of this proceeding in its wholesale UNE tariffs (*see* AW Br. at 373-34); this issue also has been fully briefed in the Commission's OSS Docket. *Id.* The CLECs suggest that Ameritech ought to be required to modify its tariff regardless of the outcome of the OSS Docket. That simply makes no sense. If a decision is made, whether here or in the OSS Docket, that Ameritech Wisconsin cannot properly be required to file tariffs, that

decision would apply to both dockets, as well as any other future dockets. Moreover, it is beside the point that Ameritech Wisconsin already has tariffs on file; if it is unlawful to require the filing of a tariff, that ends the issue. If the Commission has, for some reason, not decided this issue in the OSS Docket by the time it is ready to issue a final order in this proceeding, it should decide the issue here. There would be no sound basis for deferring the issue to the OSS Docket in such a case.

Dated: July 13, 2001

Respectfully submitted,

AMERITECH WISCONSIN

By: _____
One of its Attorneys

Mike Cauble
AMERITECH WISCONSIN
722 North Broadway Avenue
Milwaukee, Wisconsin 53202
(414) 270-4561

Theodore A. Livingston
Christian F. Binnig
Michael T. Sullivan
MAYER, BROWN & PLATT
190 South La Salle Street
Chicago, Illinois 60603
(312) 782-0600

CERTIFICATE OF SERVICE

I, Michael T. Sullivan, an attorney, hereby certify that I caused a copy of Ameritech Wisconsin's Reply Brief – Non-Confidential Version, to be served upon:

SEE ATTACHED SERVICE LIST

via overnight courier (for delivery July 16, 2001), this 13th day of July, 2001.

Michael T. Sullivan

SERVICE LIST – NON-CONFIDENTIAL

Investigation into Ameritech Wisconsin's Unbundled Network Elements: 6720-TI-161

Mr. Phillip Uekert
AT&T Communication of
Wisconsin, Inc.
44 East Mifflin Street, Suite 600
Madison, WI 53703-2877
Phone: 608-259-2223
Fax: 608-259-2203

Mr. Scott Girard
Kiesling Consulting LLC
6401 Odana Road
Madison, WI 53719-1155
Phone: 608-273-2315
Fax: 608-273-2383

Mr. James C. Rice
Charter Communications
440 Science Drive; Suite 302
Madison, WI 53711
Phone: 608-238-9690
Fax: 608-238-9881

Ms. Julie A. Kaminski
Prism Communications
Services, Inc.
1667 K Street, N.W; Suite 200
Washington, D.C. 20006
Phone: 202-263-7962
Fax: 202-263-7978

Mr. Edwin J. Hughes
Wisconsin Department of Justice
Assistant Attorney General
123 West Washington Avenue
Madison, WI 53707-7857
Phone: 608-264-9487
Fax: 608-267-2778

Mr. Grant Spellmeyer
Chorus Networks, Inc.
8501 Excelsior Drive
Madison, WI 53717
Phone: 608-826-4440
Fax: 608-826-4300

Ms. Felicia Franco-Feinberg
Covad Communications
227 West Monroe
20th Floor
Chicago, Illinois 60606
Phone: 312-596-8386
Fax: 312-596-8666

Ms. Maureen St. Germain
Wisconsin State
Telecommunications Associations
6602 Normandy Lane
Madison, WI 53719
Phone: 608-833-8866
Fax: 608-833-2676

Mr. Nicholas D. Jackson
TDS Metrocom
Director of Business Operations
1212 Deming Way; Suite 350
Madison, WI 53717
Phone: 608-663-3350
Fax: 608-663-3340

Mr. Thomas J. Rutkowski
Communications Management
Group, LLC
7633 Ganser Way; Suite 202
Madison, WI 53719-2092
Phone: 608-829-2667
Fax: 608-829-2755

Ms. Joan L. Volz
13525-265 Street
Welch, MN 55089
Phone: 651-490-1649
Fax: 651-490-7579

Mr. Shane T. Kaatz
Manager Carrier Relations
TDS Metrocom
1212 Deming Way; Suite 350
Madison, WI 53717
Phone: 608-663-3149
Fax: 608-663-3340

Mr. Mark Jenn
Manager, Federal Affairs
TDS Telecom
301 S. Westfield Road
Madison, WI 53717
Phone: 608-664-4196
Fax: 608-664-4184

Mr. Paul Verhoeven
GTE North Incorporated
State Manager Regulatory Affairs/Tariffs
100 Communications Drive
P.O. Box 49
Sun Prairie, WI 53590
Phone: 608-837-1771
Fax: 608-837-1733

Mr. Kenneth A. Schifman
Sprint Communications
Company, L.P.
8140 Ward Parkway, 5E
Kansas City, MO 64114
Phone: 913-624-6839
Fax: 913-624-5504

Mr. Dan M. Lipschultz
Senior Regional Counsel
McLeod USA
400 South Highway 169; Suite 750
Minneapolis, MN 55426
Phone: 952-252-5002
Fax: 952-252-5299

Ms. Pamela H. Sherwood
Vice President of
Regulatory Affiairs,
Midwest Region
Time Warner Telecom
4625 West 86th Street; Suite 500
Indianapolis, IN 46268
Phone: 317-713-8977
Fax: 317-713-8923

Mr. Craig Brown
Assistant General Counsel
Rhythms Links, Inc.
9100 East Mineral Circle
Englewood, CO 80112
Phone: 303-876-5335
Fax: 303-476-2272

Mr. Peter L. Gardon
Mr. Peter R. Healy
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
22 East Mifflin Street; Suite 600
P.O. Box 2020
Madison, Wi 53701-2020
Phone: 608-229-2200
Fax: 608-229-2100

Mr. Mark A. Ozanick
Regulatory Analyst
KMC Telecom Inc.
1755 North Brown Road
Lawrenceville, GA 30043
Phone: 678-985-6264
Fax: 678-985-6213

Ms. Joan M. Campion
WorldCom, Inc.
205 North Michigan Avenue; Suite 3700
Chicago, Illinois 60601
Phone: 312-470-4943
Fax: 312-470-4929

Mr. Eric J. Branfman
Mr. Thomas R. Lotterman
Mr. Harisha J. Bastiampillai
Swidler, Berlin, Shereff,
Friedman, LLP
3000 K Street, N.W; Suite 300
Washington, D.C. 20007-5116
Phone: 202-424-7500
Fax: 202-424-7645

Mr. Clark Stalker
AT&T Corporate Center
222 West Adams Street; Suite 1500
Chicago, IL 60606
Phone: 312-230-2653
Fax: 312-230-8211

Mr. Niles Berman
Wheeler, Van Sickle &
Anderson, S.C.
25 West Main Street; Suite 801
Madison, WI 53703-3398
Phone: 608-441-3824
Fax: 608-255-6006